

# The meaning and limitations of transparency in the Norwegian Transparency Act

*The case of Joh. Kaffe and labor rights violations on Brazilian coffee farms*

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## Abstract

A deregulated and global economy poses several challenges for the realization of human rights. Human rights due diligence ('HRDD') is today considered a key tool for companies and states to conceptualize and operationalize corporate responsibility for human rights in global value chains ('GVCs'). Until recently, HRDD has been a voluntary process and one of many ways companies fulfill their social responsibility in the eyes of society. As a result, the corporate understanding and practice of HRDD has been varied and poor and not resulted in tangible benefits for rightsholders on the ground. To enhance and improve corporate practice of HRDD, states are now implementing HRDD into legislations, characterized as mandatory human rights due diligence ('mHRDD') laws. mHRDD laws represent an opportunity for states to shape the corporate uptake and practice of HRDD in ways that are beneficial for rights holders in the GVCs of companies covered by such laws. This thesis aims to explore the potential of mHRDD laws to contribute to the protection of human rights.

The potential of mHRDD laws is explored through the assessment of the Norwegian Transparency Act as a newly implemented mHRDD law, and the HRDD of one company covered by the law. Namely, the Norwegian coffee company Joh. Johansson Kaffe AS ('Joh. Kaffe') and their implementation of HRDD in their Brazilian value chain. The key findings in this thesis are threefold. First, Joh. Kaffe's implementation of HRDD is, at best, limited to addressing the high risk of labor rights violations on Brazilian coffee farms in their value chain. Second, these limitations are reflected in the implementation of the Transparency Act, which does not provide clarity on what is to be considered compliant HRDD or include enforcement mechanisms to hold companies accountable for not doing HRDD in a meaningful way for rights holders. Furthermore, the Transparency Act does not require companies to disclose traceability or financial information crucial to advance our understanding of root causes and possible solutions to address corporate infringements on human rights in GVCs. Finally, the limitations identified in the Transparency Act in the case of Joh. Kaffe reflect contemporary and future challenges in the design and implementation of mHRDD laws which contribute to the protection of human rights.

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## List of acronyms

ADERE-MG - Articulação dos Empregados Rurais do Estado de Minas Gerais

BHR – Business and Human Rights

CoC – Code of Conduct

Cooxupé – Cooperativa Regional de Cafeicultores em Guaxupé LTDA

CS – Certification Scheme

CSO – Civil Society Organization

ECOM – ECOM Agroindustrial Corp. Ltd

ETI – Ethical Trading Initiative

FAO - The Food and Agriculture Organization of the United Nations

GVC – Global Value Chain

HRDD – Human Rights Due Diligence

ICP – International Coffee Partners

ILO – International Labor Organization

ITUC – International Trade Union Confederation

Joh. Kaffe – Joh. Johannson Kaffe AS

MG – Minas Gerais

mHRDD – Mandatory Human Rights Due Diligence

OECD-FAO Guidance – OECD-FAO Guidance for Responsible Agricultural Supply Chains

OECD Guidance - OECD Due Diligence Guidance for Responsible Business Conduct

RBC – Responsible Business Conduct

RFA – Rainforest Alliance

UNGPs – UN Guiding Principles on Business and Human Rights

VSS – Voluntary Sustainability Standard

## Chapter 1 Introduction

*‘Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved’* (United Nations, 2011, p. 13)

One of the latest and most comprehensive attempts to address the existing governance gaps related to business and human rights in global value chains (‘GVCs’), is the UN Guiding Principles on Business and Human Rights (‘UNGPs’). In short, the UNGPs are a set of guidelines aiming to operationalize the UN Framework of human rights, and furthermore provide a common language for what to expect from states and businesses regarding human rights (OHCHR, 2021). Since their unanimous adoption by the UN Human Rights Council in 2011, the UNGPs have diffused into policy frameworks, laws, and regulations across the globe (Landau, 2019; Wolfsteller & Li, 2022). With the revision of the OECD Guidelines to align with the UNGPs (Smit et al., 2021), the normative developments spurred by the UNGPs are argued to have shaped a global norm on what it means for business enterprises to respect human rights (Buhmann et al., 2019). As such, the UNGPs together with the practical guidance from OECD are considered a common point of reference for standards, initiatives, and guidelines for the corporate responsibility to respect human rights (Elgesem & Høstmælingen, 2019). The field of business and human rights (‘BHR’) explores the corporate responsibility for human rights in a global economy (Schrempf-Stirling & Buren, 2020), and is the field to which the findings in this thesis wish to contribute.

### 1.1 Human rights due diligence

The UNGPs conceptualizes the corporate responsibility to respect human rights as not infringing on those rights, also throughout its GVCs (Taylor, 2020). To operationalize this responsibility, companies are required to have in place: “(a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (United Nations, 2011, p. 20 - 21). As such, the process of human rights due diligence (‘HRDD’) is used to conceptualize and operationalize responsible business conduct for human rights in a global economy (Buhmann et al., 2019; Landau, 2019).

In short, HRDD is the process where a business enterprise assesses actual and potential human rights impacts, integrates and acts upon the findings, tracks the effectiveness of actions implemented, and communicates how impacts are addressed (United Nations, 2011, p. 17 - 18). HRDD has become a common currency amongst scholars, governments, companies and stakeholders (Deva, 2023), and there is a broad acceptance in the global business community that companies do have a responsibility for human rights (Muchlinski, 2021). However, the acceptance of and commitment to a norm does not signify its implementation in practice, and improvement for rightsholders in GVCs has not materialized (Chambers & Vastardis, 2020). In their report, the Working Group on Business and Human Rights stated that most companies around the world “remain either unaware of their responsibility, or unable or unwilling to implement HRDD as required of them” to meet their responsibility to respect human rights. This indicates that human rights risks are not meaningfully being managed despite growing awareness and commitments (Working Group on Business and Human Rights, 2018).

The implementation of the UNGPs has mostly been voluntary since their adoption in 2011 (Quijano & Lopez, 2021). While there remains disagreement about how to advance corporate respect for human rights in GVCs (Nolan, 2022), avoidance of legal and reputational risks are identified as the top two incentives behind companies implementing HRDD (McCorquodale et al., 2017; Smit et al., 2021). As such, legal frameworks may play a key role to ensure the corporate implementation of HRDD. States were consequently encouraged to scale up good practices of corporate HRDD as “an inherent part of the State duty to protect human rights” (Working Group on Business and Human Rights, 2018).

## 1.2 Towards mandatory human rights due diligence

Today, countries such as France, Germany, Norway, the Netherlands, and Switzerland have adopted so-called mandatory HRDD (‘mHRDD’) laws, implementing the concept of HRDD into national legislations in different ways. As such, the implementation of mHRDD laws has been identified as a trend – at least among States in Western Europe - to harden corporate human rights requirements (Choudhury, 2023; Deva, 2023; Nolan, 2022). And it appears this is a trend which has come to stay (Landau, 2019). The implementation of mHRDD laws hold the potential to change the nature of corporate HRDD and develop mechanisms for corporate accountability for human rights (McCorquodale & Nolan, 2021). As such, this trend has been characterized as progress to advance corporate understanding and respect for human rights

with which they are involved (Quijano & Lopez, 2021). While likely to be more comprehensive than existing regulations of GVCs, their specific institutional design and stringency are highly contested (Schilling-Vacaflor & Lenschow, 2021).

Simply making HRDD mandatory will not automatically lead to corporate conduct which prevents and addresses their adverse impacts on human rights in a meaningful way (Deva, 2023; McCorquodale & Nolan, 2021). There exists a risk that corporate HRDD – mandatory or not - merely creates an illusion of responsibility rather than achieving actual impacts for rightsholders on the ground, resulting in cosmetic compliance (Landau, 2019). Consequently, the battlefield has shifted from whether HRDD should be mandatory or voluntary, to discussions about how mHRDD laws are to be designed and implemented to contribute to the protection of human rights in GVCs (Quijano & Lopez, 2021). In general, the lack of knowledge about the effectiveness of corporate human rights accountability norms and instruments is one of the largest and most persistent gaps within the field of BHR (Wolfsteller & Li, 2022). This knowledge gap is what this thesis aims to address, by examining the potential of the Norwegian version of a mHRDD law – the Transparency Act, to contribute to the protection of human rights in the GVCs of companies covered by the Act.

### 1.3 The Norwegian Transparency Act

All mHRDD laws adopted so far have employed different approaches to promote HRDD (Deva, 2023). Norway is one of the latest states implementing a mHRDD law, and the Norwegian Transparency Act entered into force 1 July 2022. Its stated purpose is to promote corporate respect for human rights and decent work through requirements for knowledge and information regarding how enterprises address adverse impacts in their value chains (Transparency Act, 2022; Norwegian Ethics Information Committee, 2019). Simply explained, companies over a certain size are required to a) carry out HRDD, and b) inform the public about their assessments (Transparency Act, 2022). The process of HRDD is highly context specific, and each company is expected to implement HRDD in different ways depending on its size, the nature and context of its operations, and the severity of human rights violations with which the company is involved (United Nations, 2011). Whether, and under what conditions, mHRDD laws result in improved protection of human rights needs to be studied empirically in different sectors and places (Schilling-Vacaflor & Lenschow, 2021). Therefore, this thesis aims to explore the potential of the Transparency Act through a case study of one company covered by the Act.

The Norwegian coffee company Joh. Johansson Kaffe AS ('Joh. Kaffe') is one of the ca. 9000 companies covered by the Transparency Act. Coffee is a well-known high-risk product in terms of human rights issues, and indecent working conditions and lack of labor rights and living wages are widespread social challenges at the producing end of the coffee chain (Barreto Peixoto et al., 2023; Kahle-Piasecki et al., 2021). As a part of their HRDD, Joh. Kaffe has identified the Brazilian context of coffee production as a particular high-risk context in terms of severe labor rights violations such as forced labor. Consequently, the Brazilian context of coffee production requires enhanced HRDD from Joh. Kaffe, due to the high risk of severe human rights violations connected to coffee as a product and Brazil as a geographic location. For a further elaboration of the case-selection, see chapter 3.

#### 1.4 Research question and thesis statement

In this thesis I will examine how the Norwegian Transparency Act, as a mHRDD law, work in practice to prevent and address human rights violations in GVCs. I will do so through the in-depth assessment of a specific company covered by the Transparency Act, Joh. Kaffe, and their Brazilian value chain of coffee. This will allow me to uncover mechanisms which may influence the potential of mHRDD laws to address adverse human rights impacts in GVCs. As such, this thesis constitutes a case study which will draw on and contribute to existing research within the field of BHR on the effectiveness of mHRDD laws to prevent and address corporate human rights infringements in GVCs.

The research questions to be answered in this thesis are the following:

1. *How does Joh. Kaffe implement HRDD in their Brazilian value chain?*
2. *To what extent does Joh. Kaffe's HRDD benefit relevant rightsholders on Brazilian coffee farms?*
3. *How are the strengths and limitations of Joh. Kaffe's HRDD reflected in the implementation of the Norwegian Transparency Act as a mHRDD law?*

As such, the rest of this thesis aims to explore how Joh. Kaffe has chosen to implement HRDD in their Brazilian value chain of coffee, and whether this approach is beneficial for rightsholders on Brazilian coffee farms. Furthermore, how the identified strengths and limitations of Joh. Kaffe's HRDD are reflected in the design and implementation of the Transparency Act as a mHRDD law. This will provide insights into how companies covered

by mHRDD laws understands and implements HRDD under such laws and say something about the potential of mHRDD laws to contribute to the protection of human rights in GVCs.

Throughout this thesis, I will provide arguments for how and why the Transparency Act may fall short of fulfilling its purpose of promoting corporate respect for human rights through informational requirements. These arguments will be supported by a reading of the current literature, empirical analysis of documents, and interview-data from around 30 people across the value chain of Joh. Kaffe. In short, I argue that in the case of Joh. Kaffe's GVC of coffee between Norway and Brazil, the Transparency Act as a mHRDD law does not substantially and significantly advance labor rights on Brazilian coffee farms because the practice of HRDD is largely cosmetic. Consequently, the root causes of indecent working conditions are not addressed and HRDD risks simply becoming a smokescreen for business-as-usual. Although the findings in this thesis also shed light on the positive potential of the Transparency Act to address human rights infringements in GVCs, my thesis first and foremost indicates that – if not addressed – the Transparency Act will become just another failed attempt to address human rights violations in GVCs. Furthermore, these findings shed light on contemporary and future challenges regarding the prevention and mitigation of human rights violations in corporate GVCs.

## 1.5 Thesis outline

I have chosen to structure the thesis in 8 chapters. Chapter 2 will situate my research within the field of BHR. Here, I introduce the scholarly debate on mHRDD law efficiency, define efficiency as the ability to prevent and address adverse human rights impacts in GVCs, and introduce the Norwegian Transparency Act as the mHRDD law which will be studied in this thesis. In chapter 3 I introduce the research design and key elements of the case, primarily the coffee company Joh. Kaffe and contextual background on coffee production and labor rights in Brazil. In Chapter 4 I explain in detail how I conducted the primary research, with a focus on ethical considerations and interview methods.

Chapter 5 provides a descriptive account of Joh. Kaffe's communicated HRDD in their Brazilian value chain, while Chapter 6 analyses the strengths and limitations of Joh. Kaffe's HRDD for wage workers on Brazilian coffee farms. In chapter 7, I will discuss how the identified strengths and limitations of Joh. Kaffes HRDD are reflected in the implementation of the Norwegian Transparency Act. Finally, I summarize and provide

concluding remarks on how the findings in this thesis shed light on the contemporary and future efficiency of mHRDD laws to prevent and address adverse human rights impacts in GVCs.

## Chapter 2 The purpose and pitfalls of mHRDD laws and the Norwegian Transparency Act

This chapter aims to introduce and explore the scholarly debate within BHR on the efficiency of mHRDD laws to constitute a positive contribution to the protection of human rights in GVCs. Furthermore, to introduce the Norwegian Transparency Act as the mHRDD law which will be the subject of analysis in this thesis. The chapter is divided in four sections. First, I will introduce the aim of mHRDD laws and the proposed conditions under which mHRDD laws are more likely to contribute to the protection of human rights (2.1). Secondly, I will address and conceptualize meaningful transparency and argue for its importance at this stage of mHRDD laws design and implementation (2.2). Thirdly, I will introduce the Transparency Act as an example of a mHRDD law, through which I will assess the potential of mHRDD laws in this thesis (2.3). Finally, I will briefly summarize the state of the body of knowledge I have presented and argue for the value of a case study of one specific company to test the promise of the Transparency Act as a mHRDD law (2.4).

### 2.1 The purpose and challenges of making HRDD mandatory

At its core, the process of HRDD aims to prevent and address negative infringement on human rights by business enterprises (Ramasastry, 2015). The ambiguous and business-friendly language of the UNGPs aims to ensure a high corporate uptake of HRDD (Deva, 2023), making its implementation sufficiently flexible to implement by different companies in different contexts, and take advantage of the corporate capacity to regulate themselves (Landau, 2019). Furthermore, the central role of ‘due diligence’ may be efficient to ensure corporate uptake of HRDD due to companies’ familiarity with the process (Deva, 2023; Ford & Nolan, 2020; Trebilcock, 2015). Indeed, the UNGPs and process of HRDD have received wide support in the business community (Muchlinski, 2021), and companies implementing HRDD do have a more context-specific and innovative approach, where the limitations of traditional tools such as social audits and Codes of Conduct (‘CoC’) are being acknowledged and addressed (Smit et al., 2021). Furthermore, companies implementing HRDD are more likely to identify adverse impacts, track effectiveness of their actions, consider a wider range of human rights and consult human rights experts, than those not implementing HRDD (McCorquodale et al., 2017). As such, making HRDD mandatory in mHRDD laws is an attempt to harden corporate human rights responsibilities in the form of HRDD, with the

overarching aim of meaningfully contribute to the protection of human rights in GVCs (Rogerson et al., 2022). Making HRDD mandatory will allow lawmakers to address the existing corporate discretion to determine the scope and nature of what is to be considered compliant HRDD (McCorquodale & Nolan, 2021).

### 2.1.1 The challenges of mHRDD laws

As elaborated on above, making HRDD mandatory is supposed to (1) oblige companies to implement HRDD, and (2) make companies implement HRDD in a meaningful way; that is in ways which is beneficial for rightsholders. This is also how I conceptualize effectiveness of mHRDD legislation. For mHRDD laws to be effective, they need to contribute to positive change for rightsholders. While the general effectiveness of mHRDD laws to prevent and address corporate infringements on human rights is still under assessment, doubts about their value have emerged (Deva et al., 2023; McCorquodale & Nolan, 2021). This is due to several factors, but partly because states implementing mHRDD laws do not address the inherent limitations of the process of HRDD, and rather mandate HRDD which merely leads to cosmetic compliance with their responsibility to respect human rights, rather than any substantial change for rightsholders on the ground (Deva, 2023).

Cosmetic compliance occurs when companies “adopt internal policies and compliance structures that have all the formal hallmarks of human rights due diligence, but that fail to lead to genuine and substantial improvements in practice” (Landau, 2019, p. 221). There is a large gap between the companies who only express their commitment to HRDD and those who implement HRDD which leads to substantial positive change for rightsholders on the ground (Deva, 2023; McCorquodale & Nolan, 2021). Overall, corporate reports on human rights amongst EU firms are characterized as “shallow, symbolic and talk-oriented” (Rogerson et al., 2022, p. 36). As such, companies are seemingly implementing HRDD, but lack substantive and action-oriented disclosure which holds true potential to positively contribute to the protection of human rights.

While HRDD is about identifying and addressing risks that the company is posing to human rights, not about the economic risk human rights is posing to the company (Elgesem & Høstmælingen, 2019), there is little room for the consideration of human rights interests in corporate decision-making today (Choudhury, 2023). This creates a high risk that – if not addressed by states mandating HRDD - the commercial objectives of the company will still

prevail in the process of HRDD and thus become profit-driven rather than rights-driven (Deva, 2023; Landau, 2019). The corporate familiarity with due diligence in combination with unclear and weak definitions of HRDD carries the risk that companies will integrate HRDD reporting into their existing structures and implement HRDD through familiar – but non-efficient – tools such as social audits and VSS, and continue to outsource their responsibility to third-parties (Ford & Nolan, 2020; Nolan, 2022). This may result in companies merely having certain routines in place regardless of how they are implemented and whether they result in actual impacts for rightsholders, e.g. the use of contracts, social audits, certain reports and documents, purchase of certifications, and third-party verification schemes, and still be considered to comply with mHRDD laws (Smit et al., 2023).

There are several characteristics of the process of HRDD which make it susceptible to cosmetic compliance, such as its use of ambiguous, imprecise and business friendly language (Deva, 2023; Landau, 2019). While considered one of the main strengths of the UNGPs, this language creates ambiguity on what is expected of companies with regards to HRDD, and create considerable scope for corporate discretion (Landau, 2019). If companies themselves determine the scope and nature of what is to be considered compliant HRDD, this may lead to inconsistent and weak adaptation (Deva, 2023). The centrality of the concept of due diligence is considered problematic, as there is an inherent tension in using a system that aims to avoid liability and risk, as one that is supposed to reinforce respect for human rights (Trebilcock, 2015).

Furthermore, this potential failure of mHRDD laws to constitute a positive contribution for human rights, is accompanied by a concern that – if not addressed - these laws may do more harm than good for rightsholders. This may be the case if mHRDD laws are not designed and implemented in a way that benefits rightsholders, and in addition (1) end up becoming merely a distraction from more substantive mechanisms to protect human rights in GVCs (Nolan, 2022), or (2) entrench existing power asymmetries, mainly between rightsholders and companies, in GVCs by providing companies – and states - with a tool of social legitimization while masking the root causes of human rights violations (Choudhury, 2023; Deva, 2023; Deva et al., 2023; Quijano & Lopez, 2021). As such, the introduction of mHRDD laws holds the potential to create an illusion of positive change – cosmetic compliance - by the companies implementing HRDD under such laws, masking root causes and allow companies to continue with business as usual. Furthermore, HRDD may equip

companies with a new tool to further their impunity, while nothing changes on the ground (Deva et al., 2023; Landau, 2019; Smit et al., 2023).

### 2.1.2 Empirical research on existing mHRDD laws

Empirical research on the already implemented mHRDD laws do not seem to spur optimism amongst scholars. Companies are far from accepting a general legal liability for violating or being linked to the violation of human rights (Muchlinski, 2021), and the current design of mHRDD laws do not contain “adequate safeguards to ensure duties are carried out properly and in accordance with the relevant legislation” (Chambers & Vastardis, 2020, p. 326). The implementation of mHRDD laws is in its infancy, and states seem uncertain of themselves and what they can expect from companies, which has resulted in policies and laws which reiterate rather than elaborate on the UNGPs’ (Landau, 2019). Consequently, the risks of cosmetic compliance accompanying the ambiguous and business-friendly language of the UNGPs have not been addressed.

None of the five enacted mHRDD laws in European countries provide a comprehensive and clear framework for how companies are expected to implement HRDD, and all merely focus on making the process of HRDD obligatory, not the outcome of addressing infringements on human rights (Deva, 2023). As such, the enacted mHRDD laws in France, Switzerland, Norway, Germany, and the Netherlands are characterized by critics as “half-hearted attempts to tame business-related human rights abuses and hold the relevant corporate actors accountable” (ibid., p. 389). Moreover, there is a lack of empirical research on how companies respond to the design and implementation of mHRDD laws.

While not an all-encompassing solution to solving adverse impacts of corporate activity in GVCs, there is still a potential for mHRDD laws to play a key role in encouraging companies to take their human rights responsibilities seriously and create substantial change for rightsholders on the ground (Choudhury, 2023; Deva, 2023). The implementation of mHRDD laws is only in its infancy, and drafters and legislators have time to address the now emerging challenges of making mHRDD mandatory to benefit rightsholders in GVCs. For this to happen, the risk of cosmetic compliance must be addressed, and mHRDD laws must not merely aim to increase the number of companies undertaking HRDD but ensure that the corporate uptake of HRDD is accompanied by HRDD which leads to actual improvements in

ground-level human rights (Ford & Nolan, 2020; Landau, 2019). The conditions under which this is most likely to occur will be discussed in the following section.

### 2.1.3 Efficient mHRDD laws for rightsholders

While the actual efficiency of mHRDD laws to protect rightsholders in corporate value chains is under assessment, the literature focuses on three main conditions under which mHRDD laws are more likely to constitute a positive contribution to human rights in GVCs.

The first is clarity. Clear expectations to corporate implementation of HRDD can address the risks of cosmetic compliance by ensuring all companies are held to the same standards. This can counter the ambiguous and business-friendly language of the UNGPs. As such, regulators must provide clarity and consistency on what actions are required to constitute effective HRDD for rightsholders (McCorquodale & Nolan, 2021; Nolan, 2022), and thus focus on companies achieving outcomes in terms of prevention rather than merely implementing the process of HRDD (Deva, 2023). Furthermore, regulators must implement detailed and substantive duties to carry out HRDD (Krajewski et al., 2021), and clarify the circumstances under which HRDD might not be an appropriate tool (Quijano & Lopez, 2021), such as establishing the ‘red lines’ in terms of contexts where it is simply not responsible to operate (Deva, 2023).

The second condition is enforcement. Corporate accountability is at the core of the UNGPs (Ramasastry, 2015). To harden corporate accountability and address the high risk of cosmetic compliance with HRDD, mHRDD laws must be designed and implemented in a way that ensure actual consequences for those companies who fail to meet their responsibility to respect human rights (Choudhury, 2023; Deva, 2023; McCorquodale & Nolan, 2021; Muchlinski, 2021; Quijano & Lopez, 2021; Schilling-Vacaflor & Lenschow, 2021; Smit et al., 2023). Remediation should be triggered in cases where companies fail to implement HRDD, if human rights violations occur despite HRDD being conducted (Deva, 2023), and if companies fail to meet reporting obligations (Schilling-Vacaflor & Lenschow, 2021). To ensure this, the agencies charged with the enforcement of mHRDD laws must have an active role, and sufficient competences and resources to monitor and enforce corporate compliance with mHRDD laws (Krajewski et al., 2021). Moreover, these agencies must be independent

and, to address the risk of cosmetic compliance and a tick-box approach<sup>1</sup>, have the capacity to evaluate whether companies implements measures that are in practice capable of preventing the specific human rights infringement in question (Quijano & Lopez, 2021; Smit et al., 2023).

The third condition is meaningful transparency. Transparency is a key element of the process of HRDD. A responsible company is one that not merely identifies, addresses and tracks their implemented measures to address adverse human rights impacts, but also account for and thus is transparent about, this process (United Nations, 2011). The next section elaborates on transparency as a regulatory strategy and conceptualizes meaningful transparency for the purpose of this thesis.

## 2.2 Meaningful transparency to protect human rights in GVCs

Transparency on corporate conduct is an indispensable element of corporate accountability and the avoidance of cosmetic compliance for several reasons (Martin-Ortega, 2022; Quijano & Lopez, 2021). First, public disclosure of corporate behavior and structures is crucial for stakeholders and regulators to verify whether the information provided is accurate, and assess if the corporate implementation of HRDD is capable of effecting real change, and thus address the risk of cosmetic compliance of HRDD (Landau, 2019; McCorquodale et al., 2017; McCorquodale & Nolan, 2021). Secondly, transparency is key to shed light on GVC complexity, power relations and governance structures to be able to implement measures to combat human rights violations (Gardner et al., 2019; Ponte, 2019a). Thirdly, transparency may address power asymmetries in GVCs which stems from differences in the availability of different kinds of information (Gardner et al., 2019). Corporations hold extraordinary power in the contemporary global economy (LeBaron & Lister, 2022), and there is an imbalance in power, information, resources, and bargaining power of corporations vis-à-vis rightsholders in global value chains (Deva, 2023). Transparency on corporate practices is important to address the information and power asymmetry between companies and rightsholders (Gold & Heikkurinen, 2018), as differences in access to information can have a profound influence on

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<sup>1</sup> A ‘tick-box’ approach allows a company to meet the legal requirement by simply ‘ticking off’ a list of criteria, without consideration of the company’s real adverse human rights impacts and whether they are being addressed (Smit et al., 2023, p. 10).

the way in which decisions over resource-use and commodity trade are made, whilst also shaping who is most likely to win and lose from such decisions (Gardner et al., 2019).

However, transparency does not equate to corporate accountability for infringements on human rights (Martin-Ortega, 2022), and reporting on the corporate implementation of HRDD is not the same as effectively develop tools to prevent and mitigate adverse human rights impacts (Quijano & Lopez, 2021). Laws focused solely on disclosure or reporting of human rights risks are limited in their ability to prevent and address business-related human rights risks (Ford & Nolan, 2020; McCorquodale & Nolan, 2021). As such, mHRDD laws which merely require companies to be transparent about their HRDD measures, are likely to push companies to merely generate narratives which create an illusion of transparency and responsible business conduct (Gold & Heikkurinen, 2018), rather than requiring companies to undertake HRDD in a substantial way for rightsholders (Ford & Nolan, 2020; Mares, 2018). While transparency is insufficient to prevent and address corporate infringements on human rights, HRDD-related transparency can fulfill complementary prevention and accountability functions alongside other measures, but only if designed and implemented in a meaningful way (Chambers & Vastardis, 2020), mandating information which is beneficial to the protection of human rights.

### 2.2.1 Conceptualizing meaningful transparency

Although contested, transparency as a regulatory approach is not without potential benefits (Mares, 2018), and key to discussing the role of transparency in the context of mHRDD laws is to properly define it, which is rarely done for the purpose of research on GVCs and sustainability (Schäfer, 2023). According to Martin-Ortega (2022), meaningful transparency is the type of transparency which provides rightsholders with the information they need to fulfill and defend their human rights, and which allows states to take specific measures to respect, protect and promote the human rights of those affected by corporate activities (Martin-Ortega, 2022). In other words, meaningful transparency provides the information which is needed to verify and assess corporate conduct, hold companies accountable if they fail to meet their human rights responsibilities, and which is useful for rightsholders to claim their rights and for states to protect them. In their typology of supply chain information, Gardner et al. (2019) propose five types of transparency, which I – together with guiding documents on how companies are to implement HRDD - consider useful to conceptualize meaningful transparency for the purpose of corporate HRDD.

The first type of transparency is characterized as *traceability*, which is to ensure transparency on the different actors and geographic locations involved in a value chain, as well as their role and the nature of connections between the actors (Gardner et al., 2019). According to the UNGPs, companies also have responsibility for the impacts of the adverse impacts they are linked to through third parties, such as their business partners (McCorquodale et al., 2017). Companies are expected to map the different entities systematically and broadly in their value chains to uncover where human rights risks are present (OECD, 2018), and under what conditions business partners are operating, to be able to address potential and actual adverse impacts in GVCs (Smit et al., 2021). Furthermore, traceability information such as contractual and supplier relationships may address the complexity, secrecy, and lack of available public information regarding corporate relations, which perpetuates and hides practices that are harmful to different actors in GVCs (Martin-Ortega, 2022). Moreover, shed light on the distribution of power between different actors in GVCs, which is essential to inform sustainability measures (Gardner et al., 2019).

The second type of transparency regards financial transactions amongst supply chain actors. Transparency in this field aims to provide insights into the purchasing practices and investment decisions of different actors in the value chain. This can help identify how benefits and costs are distributed in a given supply chain, and who may share responsibility for human rights violations (Gardner et al., 2019). Companies frequently transfer sustainability demands – such as for human rights – onto their business partners and suppliers, while having an economic purchasing practice which contradicts these requirements (Smit et al., 2021). However, companies are expected to align their purchasing practices with the human rights expectations they are placing on their suppliers (OECD, 2018). As such, transparency on financial transactions is important to be able to assess whether companies are aligning the HRDD placed on suppliers with their own economic purchasing practices.

The last three types of transparency categories roughly speaking equals to being transparent on the corporate implementation of HRDD, where companies identify, address, and track their human rights performance. The third type is information on the actual and potential impacts an actor has on social and environmental issues, which is to set a baseline for assessing the performance of the actors involved (Gardner et al., 2019). The fourth type is on policies and actions intended to address human rights impacts and refer to the supply chain actors' policies and commitments to improve their sustainability performance and the processes through which changes in performance will be assessed (*ibid.*). The fifth and final

type of transparency is on the effectiveness of efforts to improve on-the-ground conditions, or in other words the type and extent of new actions that actors are taking to change their behavior towards reducing negative human rights impacts (ibid.).

In addition to transparency on the process of HRDD, traceability information and information on economic transactions is considered to provide a meaningful picture of the corporate conduct of HRDD. In the broader field of sustainability Gardener et al. (2019) identify a comparative absence of information on (1) vertical and horizontal distributions of economic benefits of commodity production and trade; (2) the most vulnerable and the most powerful supply chain actors, and (3) the extent and effectiveness of any activities that are being implemented to improve sustainability outcomes on the ground (Gardner et al., 2019, p. 175). This may indicate that this type of information is particularly important to shed light on to be able to assess the corporate conduct of HRDD as well as the efficiency of mHRDD laws to positively contribute to the protection of human rights.

### 2.3 Introducing and assessing the Transparency Act as a mHRDD law

This section elaborates on the design and implementation of the Norwegian *Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions* (The Transparency Act). The Transparency Act entered into force 1 July 2022 and makes Norway one of the latest states to adopt a versions of a mHRDD law (Krajewski et al., 2021). Furthermore, this section presents the existing literature on the potential of the Transparency Act to prevent and address adverse human rights impacts in GVCs and argues for the need for empirical research to assess its potential as a mHRDD law.

#### 2.3.1 The purpose of the Transparency Act and the means to achieve it

The purpose of the Transparency Act is to “promote enterprises' respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services and ensure the public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions” (Section 1, Transparency Act, 2022). As such, the purpose of the Transparency Act is two-fold. Firstly, to provide the public with “the right to information about businesses impact on basic human rights and working conditions”, which should “give them the opportunity to make informed choices and to ask questions about responsibility in business” (Norwegian Ethics Information Committee, 2019, p. 11-12). Secondly, promote respect for

basic human rights and decent work in companies and GVCs, as the requirements for information will help improve the working conditions for people connected to GVCs (Norwegian Ethics Information Committee, 2019, p. 11-12).

To fulfill its purpose, the Transparency Act contains three main duties for the about 9000 companies covered by the Act (Krajewski et al., 2021, p. 553). The first is for companies to “carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises” (Section 4, Transparency Act, 2022). The second is to account for their HRDD pursuant to Section 4, through an annual report easily accessible on the websites of the company (Section 5, Transparency Act, 2022). The third is to provide the public with the right to information, which means that “upon written request, any person has the right to information from an enterprise regarding how the enterprise addresses actual and potential adverse impacts pursuant to Section 4. This includes both general information and information relating to a specific product or service offered by the enterprise”. The company in question is correspondingly required to respond to this inquiry within three weeks (Section 6, Transparency Act, 2022). As such, the informational requirements of the Transparency Act related to corporate HRDD are the key means through which it aims to positively contribute to the protection of human rights. The monitoring, enforcement and sanctions related to the Transparency Act is placed with the Consumer Authority, which is also to provide guidance to the business enterprises covered by the law (Transparency Act, 2022).

### 2.3.2 The potential of the Transparency Act to fulfill its purpose

First, there are some characteristics of the Transparency Act which make it a step in the right direction. The Transparency Act is considered to hold positive potential regarding working conditions in GVCs, as it explicitly mention the right to decent work and living wages (as opposed to minimum wages) (Deva, 2023). Furthermore, the Transparency Act is relatively broad in scope as the duty to carry out HRDD in the Transparency Act extends to the operations of the enterprise, supply chains and business partners, and “does not limit the duties to specific tiers in the supply chain and may in principle be interpreted as covering both upstream and downstream suppliers” (Krajewski et al., 2021, p. 556). Moreover, *the right to information* has been highlighted as a progressive and unique element of the Transparency Act, with the potential to serve as an accountability tool as rightsholders and others may seek relevant information in a time-bound manner (Deva, 2023; Krajewski et al., 2021). As such, it

is argued that this right, to some extent, could address the information asymmetry between companies and the rightsholders in their GVCs (Deva, 2023).

However, both Deva (2023) and Krajewski et al. (2021) identify several limitations of the Transparency Act which makes it prone to the risk of HRDD turning into only a tick-box exercise by the companies covered by the Act, and thus merely mandate cosmetic compliance rather than significant change for rightsholders on the ground. Overarching, the Transparency Act merely mandates companies to implement the process of HRDD and does not provide for a “full regime of civil, administrative, and criminal liabilities” if companies do not implement HRDD which is beneficial for rightsholders, or even if companies do not implement HRDD at all (Deva, 2023, p. 410). As such, corporate accountability and access to remedy for rightsholders is limited (Deva, 2023; Krajewski et al., 2021), which is considered problematic as this is where mandatory measures currently are most needed to ensure that HRDD is implemented by companies in a way that prevents human rights violations in GVCs (Krajewski et al., 2021).

Moreover, while the right to information in the Transparency Act has been characterized as a baby step to overcome asymmetries of power, information, and resources between companies and rightsholders, it is unclear how this right will be used, responded to, and enforced, and it holds the potential not to be adequate to overcome the asymmetries it attempts to address (Deva, 2023). In other words, it is unclear how the informational requirements of the Transparency Act in practice will play out and work to provide the public and rightsholders with the information they need to protect human rights in GVCs. To assess whether the Transparency Act fulfill its purpose and work as a mHRDD law, I will empirically explore whether the Transparency Act is designed and implemented in a way that fulfills its purpose of ensuring the public right to information which contribute to the protection of human rights in GVCs.

## 2.4 Concluding remarks on mHRDD law efficiency

The introduction of mHRDD laws is an attempt to harden corporate human rights requirements (Schilling-Vacaflor & Lenschow, 2021), where states are able to shape the corporate conduct of HRDD in a way that contributes substantially to the prevention and remediation of corporate human rights abuses (Nolan, 2022). However, many current versions of HRDD do not exhibit the characteristics to be effective (Choudhury, 2023), and enacted

mHRDD laws in Europe are characterized as half-hearted attempts to fulfill their purpose of protecting rightsholders (Deva, 2023). mHRDD efficiency to contribute to the protection of human rights is still under assessment, and empirical research is needed to provide additional insights (Wolfsteller & Li, 2022). As such, the findings in this thesis build upon the BHR literature on how mHRDD laws are being designed and implemented in practice, and to what extent they hold potential to promote corporate HRDD which contribute to the protection of human rights in GVCs (Deva, 2023).

All mHRDD laws implemented so far have different legal approaches to HRDD. I have chosen to explore the potential of mHRDD laws through the Transparency Act, which is the Norwegian version of a mHRDD law. The Transparency Act as a mHRDD law aims to contribute to the protection of human rights through informational requirements. However, it remains to be seen whether the informational requirements of the Transparency Act can provide meaningful information to protect human rights. While both positive and negative potential has been identified in its design and implementation, there has not been conducted any empirical research – as far as I have identified – on how companies covered by the Transparency Act respond to its implementation. Consequently, this thesis will address this knowledge gap by empirically exploring how the Transparency Act has been implemented by one company. I will briefly explain the rationale behind this choice in the following section.

#### 2.4.1 A case study to assess the potential of the Transparency Act

The expected scope of companies HRDD depends on “the context in which a company is operating, its activities, and the relationships associated with those activities” (Ruggie, 2008). Furthermore, the “scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts” (United Nations, 2011, p. 15). As such, how an enterprise carries out HRDD is highly context specific (OECD, 2018), and the practice and expected HRDD for different industries in different contexts is part of what BHR scholarship provides insights into (Schrempf-Stirling et al., 2022). Consequently, I have chosen to assess the promise of the Transparency Act as a mHRDD law through a case study of one company covered by the Transparency Act. Namely, the Norwegian coffee company Joh. Johannson Kaffe AS (‘Joh. Kaffe’), and its Brazilian value chain of coffee.

## Chapter 3 A case study of the HRDD of Joh. Kaffe

This chapter aims to introduce both the research design of this thesis, which is a case study, as well as the different components of the case. In brief, I have conducted an in-depth, exploratory case study of the HRDD process of one of the ca. 9000 companies covered by the Transparency Act, to explore the Act's potential as a mHRDD law. Namely, the Norwegian coffee company Joh. Johannson Kaffe AS ('Joh. Kaffe'). Furthermore, I have chosen to specifically examine Joh. Kaffe's HRDD on coffee production in Brazil.

This chapter is divided in five main sections. Firstly, I will explain the rationale behind conducting a case study of one company and one value chain to explore the potential of the Transparency Act as a mHRDD law (3.1). Secondly, I will elaborate on the different components constituting the case study in this thesis. In addition to the coffee company Joh. Kaffe, I will here briefly introduce human rights issues in coffee production in general and in Brazilian coffee production more specifically (3.2). Thereafter, I will address potential limitations of conducting a case study in the context of rapidly changing mHRDD law developments and the recent implementation of the Transparency Act (3.3), before summarizing (3.4).

### 3.1 The purpose of a case study to explore the potential of mHRDD laws

A case study can be defined as "a method of studying elements of our social fabric through comprehensive description and analysis of a single situation or case" (O'Leary, 2017, p. 215), with the purpose of extending "our understanding of complex social phenomena" (Ogawa & Malen, 1991, p. 271). How to address human rights violations in a world of states, MNCs and financial capitalism is beyond complex. The UNGPs are designed in a way that acknowledge this complexity, which is reflected in its ambiguous language as an attempt to be sufficiently flexible for companies to implement in different contexts (Landau, 2019). As such, the nature and scope of what is expected from companies in terms of HRDD is highly context-dependent and will not only be different for each company, but each company may be expected to implement HRDD in different ways in the different contexts of their operations (OECD, 2018; United Nations, 2011). This makes an in-depth exploratory case study of one company, one value chain, and one geographic origin valuable to uncover context-specific mechanisms with the potential to hinder or advance the efficiency of mHRDD laws to positively contribute to human rights.

While not necessarily representative or generalizable, “cases can add to new knowledge through their ability to debunk theory, generate theory and support existing theory” (O’Leary, 2017, p. 219), as well as provide deep contextual knowledge and the opportunity to take a closer look at the mechanisms at play in various social relationships. The empirical knowledge collected and analyzed in this thesis help us understand the interactions between mHRDD laws, companies, and stakeholders in this specific case, but could also shed light on mechanisms and processes that may be present in other contexts of mHRDD and in other GVCs. As a detailed empirical contribution, this case study could also contribute to future theory building in the field of BHR, and more specifically on the potential of mHRDD laws to prevent and mitigate human rights violations in GVCs. As such, the aim of this thesis is not to build theory or make generalizable claims, but rather to provide a detailed description of some of the many challenges mHRDD laws are facing to contribute to the protection of human rights in GVCs. The following section introduces and elaborates on the different components of the case and what kind of contribution this specific case study may constitute.

### 3.2. Introducing case components

The choice of the specific case elements has been influenced by several factors, both deductive strategies, as well as inductive results of the research process. Overall, I have identified three main factors influencing the choice of case elements. Firstly, my ability to reach required data and people, which is considered a pre-requisite for case selection when conducting an in-depth case study (O’Leary, 2017, p. 218). Secondly, the case selection has been theoretically driven. HRDD is a risk-based process, where companies are expected to implement enhanced HRDD when there is identified a particular high risk for human rights violations related to certain products, locations and/or business relationships in the value chain of a company (OECD-FAO, 2016). This means that the higher the likelihood for and severity of risk for adverse impacts to occur, a more comprehensive HRDD process is expected from the companies. Consequently, I wanted a case that was well-established as a red-flag context, also by the case company, as this would increase the probability that HRDD had been implemented, allowing for a deeper exploration of challenges for rightsholders on the ground. Thirdly, the case selection is a result of the research process itself and the knowledge constructed during conversations and by exploring existing material on business and human rights. I will now delve a bit deeper into the three main components of this case. First, the coffee company Joh. Kaffe (3.2.1), before elaborating on the high risks of human

rights violation at the producing end of the coffee chain and the Brazilian context of labor rights and coffee production (3.2.2).

### 3.2.1 Joh. Johannson Kaffe

To explore whether mHRDD laws work in practice, I wanted to study a company that was covered by a mHRDD law. As for choice of mHRDD law, I am a Norwegian citizen living in Norway, who have been following the design and implementation of the Transparency Act over the last couple of years. As such, I made it a pre-condition that the company was covered by the Norwegian Transparency Act. Regarding the choice of company, Joh. Kaffe was chosen partly due to its size and long history on the Norwegian coffee market. In brief, Joh. Kaffe is a Norwegian company with coffee as the main product in its portfolio, which Joh. Kaffe imports, roasts and distributes (Joh. Kaffe, 2023). Around one-third of all coffee consumed in Norway is produced by Joh. Kaffe, making the company a key actor on the Norwegian coffee market (Joh. Kaffe, 2022)<sup>2</sup>. The combination of coffee as its only product, as well as size of the company ensured a well-established HRDD capacity by Joh. Kaffe in their GVC of coffee.

Moreover, Joh. Kaffe has been implementing and communicating on HRDD in their coffee chain since 2019 and has been open and willing to share their perspectives and challenges in terms of HRDD and the Transparency Act. Joh. Kaffe has also shared key contacts relevant for the HRDD process in Brazil. This has enabled me to gain a deeper understanding of how the process of HRDD has been conducted by Joh. Kaffe and what challenges arise for the process of HRDD to benefit rightsholders.

### 3.2.2 Coffee and human rights in Brazil

The choice of company did not precede the choice of coffee as a product and Brazil as the geographic context of operations. The choice of company was also a result of the combination of the general high risk of human rights violations in coffee production, and Brazil as big actor in the global coffee industry and a high-risk context of operations in terms of human rights. As a Norwegian who have lived in Brazil for longer periods, speaks Portuguese and

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<sup>2</sup> To avoid confusion by readers who are well-familiar with Joh. Kaffe, I wish to explicitly state that this thesis explores the HRDD of Joh. Kaffe in their commercial value chain of coffee, not the HRDD conducted by Norgesgruppen as a parent company, or f. ex Solberg & Hansen as a subsidiary, who deals mostly in specialty coffee.

has an existing network in the country, I wanted to conduct a case study in Brazil due to access and personal motivation. Theoretically, Coffee in Brazil constitutes a good case for assessing the Transparency Act's implementation for the simple reason that it is a case where HRDD is likely to be conducted. Under the Transparency Act companies are expected to implement enhanced HRDD if there are identified high risks for human rights violations due to so-called red-flag products, geographic locations and/or business partners. Coffee in Brazil constitutes a double red flag, as it is both a sector and a country where indecent working conditions are common, which I will now elaborate on.

First, enhanced HRDD is expected if the company is linked to the production of agricultural products which are "known to have adverse environmental, social, or human rights impacts" (OECD-FAO, 2016, p. 37). Despite considerable efforts over the last decades, the coffee industry has not yet managed to free itself from the history of severe labor rights violations at the producing end of the chain. Small-scale farmers and wage workers on coffee farms are facing innumerable social, economic, and environmental challenges (Barreto Peixoto et al., 2023), and indecent working conditions and lack of labor rights is a widespread social challenges in the production of coffee, where severe violations such as child labor and forced labor is prevalent in all producing countries (Kahle-Piasecki et al., 2021; Panhuysen & de Vries, 2023). Due to this prevalence of severe human rights violations, coffee is characterized as a high-risk product in terms of human rights (Direktoratet for forvaltning og økonomistyring, 2022), which is one of the main reasons for coffee being chosen for this case study. In addition, human rights issues in the coffee chain are well researched, which has provided me with sufficient contextual background on the particularities of the chain in the context of HRDD and labor rights in Brazil.

Second, enhanced HRDD is expected when an agricultural product originates from areas which are considered high risk areas in terms of certain human rights violations, e.g. where violations of human rights are reported or where regulators do not have the capacity or will to enforce responsible business conduct (OECD-FAO, 2016). Social issues such as hazardous work, pesticide use and poor labor conditions are common challenges in Brazilian agriculture in general (Maguire-Rajpaul et al., 2020; Pohlmann et al., 2020), as well as coffee production more specifically (Nab & Maslin, 2020). In 2021 and 2022, Brazil was ranked one of the 10 worst countries in the world for working people due to murders, repression of strikes, the undermining of collective bargaining, anti-union discriminatory measures and violation of collective agreements by both employers and the authorities (International Trade

Union Confederation ('ITUC'), 2021 & 2022). Despite slavery being recognized as a crime in Brazil, more than a thousand victims of slavery are still identified every year<sup>3</sup> (Pineiro et al., 2019), and coffee production is the economic sector where most workers are found in conditions analogue to slave labor (SmartLab, 2022).

Despite the implementation of measures to address the problem of modern slavery in Brazil (see Pineiro et al., 2019), workers keep falling back into exploitative situations (Issa, 2017). In July 2017, the Brazilian Senate approved a labor reform which provides a legal environment that reappraises collective negotiation, deregulates the labor market, and modifies the trade union funding system, thus representing a significant and substantial novelty in the Brazilian labor relations system (Carbonai, 2019). The reduction of government interference in employment relationship was characterized as “highly risky in a country still marked by extreme social inequality and where workers generally do not negotiate on equal terms with the other contracting party” (Fernandes, 2017, p. 238). Furthermore, the lack of sufficient resourcing of the labor inspectorate has emerged as another key concern regarding labor rights in Brazil (Pineiro et al., 2019).

Historically, slave labor has been crucial for the cultivation of coffee and thus the Brazilian export economy (Caldarelli et al., 2019; Issa, 2017). The identified labor rights challenges in contemporary Brazilian coffee industry include, but are not limited to, high levels of informality, debt bondage, strenuous working hours, degrading working conditions, forced labor and child labor, fraud in mandatory benefits, payment below the legal minimum wage, lack of personal protective equipment as well as proper and safe housing and transportations (Oxfam Brazil, 2021). Minas Gerais ('MG') is by far the biggest coffee producing state in Brazil, accounting for around 60 per cent of total production. In the MG coffee sector informal workers were 58.2 per cent of the workforce in 2019, a percentage which increased during the harvest period between May and September (Oxfam Brazil, 2021). The Northeast, from which many workers migrate to Minas Gerais during the harvest season, is one of the poorest regions of Brazil (Griesse, 2007). This, in addition to the distance from home, increase their vulnerability to labor rights violations (Issa, 2017).

In other words, the Brazilian context of coffee production is characterized by a high risk of severe labor rights violations for wage workers, requiring enhanced HRDD by Joh.

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<sup>3</sup> According to data released by the Public Ministry of Labor in January 2023, 2,575 workers were found in conditions analogous to slavery in 2022, during 432 operations carried out throughout Brazil.

Kaffe according to the UNGPs. Furthermore, Brazil was responsible for 40 per cent of world coffee production in 2022 (Panhuysen & de Vries, 2023, p. 8), and has been the primary producer and exporter of coffee for the last 150 years (Moda et al., 2022). Together with Colombia, Brazil is the country Joh. Kaffe purchase most of its coffee from. In combination with the high risk of severe labor rights violations, this indicates labor rights in Brazilian coffee production to be of high priority to Joh. Kaffe.

### 3.3 Limitations of case study as a research design

The findings in this thesis are based on Joh. Kaffe's communicated HRDD between fall 2022 and spring 2023. While this could be considered relatively recent, the field of BHR is rapidly changing, and the data collected on Joh. Kaffe's HRDD may be outdated by the time you, dear reader, is reading this. In this writing moment, there are only a few states which have implemented mHRDD laws. The concept of HRDD is still unfamiliar for many, and lawmakers are unsure of themselves and what they can demands from companies regarding HRDD (Landau, 2019). The implementation of mHRDD in future EU jurisdiction may compel behavioral change (Rogerson et al., 2022). However, the findings in this thesis shed light on key challenges regarding the design and implementation of mHRDD laws.

Although I have argued for the importance of conducting this research at this moment of the implementation of the Transparency Act - in its infancy - the short period of implementation of the Act creates obvious and serious hurdles. The Transparency Act entered into force 1 July 2022 and has been implemented for little over a year when submitting this thesis. For many of the actors I have spoken to, the first year of implementation has been a trial year where guidance, dialogue and enhanced corporate understanding of the law has been the main priority. Consequently, enforcement and punishment in cases of non-compliance has taken second stage. The corporate understanding and implementation of HRDD under the Transparency Act is rapidly changing. I consider this a strength. However, it may also reduce the immediate relevance of my thesis.

When this thesis is published, Joh. Kaffe may have radically chosen to change the way they implement HRDD, and several new articles on the Transparency Act specifically as well as mHRDD laws in general could have been published. These developments have the potential to make the findings in this thesis less relevant. Moreover, the scholarly discussion on effectiveness of mHRDD laws is happening in real time and is being advanced by the

month. However, while recognizing the limitations of the timing of conducting research on the Transparency Act, the contextual, qualitative, and in-depth nature of this thesis makes it a unique case study which hold relevance and importance for shedding light on current and potential future challenges of the implementation of the Act. It can also be used as a case for monitoring and researching change (or lack of change) over time, in the context of the Transparency Act and other mHRDD laws.

### 3.4 Summary

In this chapter I have introduced the research design of this thesis. In brief, I have conducted a case study of the HRDD process of the Norwegian coffee company Joh. Kaffe. Joh. Kaffe is one of the ca 9000 companies covered by the Transparency Act. Furthermore, I have explored Joh. Kaffe's implementation of HRDD in their Brazilian value chain of coffee. The well-known high risk of labor rights violations on Brazilian coffee farms in combination with Joh. Kaffe's size and capacity to implement HRDD, means Joh. Kaffe is expected to implement enhanced HRDD. This allows for a deeper understanding of the HRDD process and uncover contextual mechanisms which are crucial to explore the potential of mHRDD laws to contribute to the protection of human rights in GVCs. Before presenting findings and analysis, the following chapter will provide an account of how I have conducted my research and provide reflections on the ethical aspects of the research process.

## Chapter 4 Methods and ethical considerations

This chapter gives an account of the methods employed to answer the research question presented above, as well as ethical considerations related to the choice of methods. In short, this is a qualitative case study that combines insights from existing legal- and policy analysis, with insights gained empirically through field work in Brazil, and exploratory, semi-structured interviews with actors in Norway and Brazil. This chapter provide a descriptive account of what kind of data I have collected, how I have collected it, and what purpose this data serves in the process of answering my research questions.

The chapter is divided in seven subchapters. As my research question is threefold, I have dedicated the first three subchapters to explaining how I have approached the different questions. Firstly, I explain what I have done to understand how Joh. Kaffe implements HRDD in their Brazilian value chain (4.1), before explaining what I have done to analyze whether Joh. Kaffe's benefit rightsholders on Brazilian coffee farms (4.2). Thereafter, I briefly present how I have accessed information on the Transparency Act to discuss how findings on Joh. Kaffe's HRDD is reflected in its design and implementation (4.3). The fourth subchapter presents the technical tools through which I have collected and analyzed primary and secondary data (4.4), while the fifth subchapter addresses my positionality (4.5). In the sixth subchapter I reflect upon the ethical considerations of the methods employed during the research process (4.6), before summarizing the chapter (4.7).

### 4.1 Understanding how Joh. Kaffe implements HRDD

To get an accurate picture of how Joh. Kaffe has chosen to implement HRDD in their Brazilian value chain, I have used a combination of semi-structured interviews, written documents, and the right to information under the Transparency Act. The collection of data on Joh. Kaffe's HRDD started early fall of 2021, roughly one year before the implementation of the Transparency Act. To begin with, I conducted semi-structured interviews with the sustainability manager of Norgesgruppen<sup>4</sup>, which provided valuable insights in the overall implementation of HRDD in Norgesgruppen as a concern, and thus also for Joh. Kaffe as its subsidiary. To obtain data on the HRDD of Joh. Kaffe I firstly examined their communicated HRDD in their annual membership report to Ethical Trading Initiative Norway ('ETI

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<sup>4</sup> The Norwegian concern and food retailer Norgesgruppen is the parent company of Joh. Kaffe.

Norway’). Secondly, I conducted two semi-structured interviews with the sustainability manager of Joh. Kaffe to address any questions I had after reviewing their report, as well as after conducting field work in Brazil. Furthermore, the data collection included e-mail correspondence where Joh. Kaffe responded to emerging questions from my part as well as the documents they send to their Brazilian first-tier suppliers as part of their HRDD.

Thirdly, I used the right to information under the Transparency Act in two instances. First in November 2022, where I asked how Joh. Kaffe implements HRDD in their Brazilian value chain (see Appendix B for detailed inquiry). Second, after fieldwork in Brazil where I specified my question to asking about wage workers on Brazilian coffee farms. The answer to the second inquiry was the exact same as to the first inquiry and is not included in the appendices. When Joh. Kaffe published their first report as required from the Transparency Act in June 2023, I incorporated changes from the 2023 report. This is the latest data I have on Joh. Kaffe’s HRDD implementation (see Joh. Kaffe, 2022 & 2023 for full reports).

As such, the findings regarding Joh. Kaffe’s implementation of HRDD is based on data collected through (1) document analysis of Joh. Kaffe’s communicated HRDD in their membership report to ETI Norway; (2) semi-structured interviews and e-mail correspondence with the sustainability manager of Joh. Kaffe; (3) the answer received from Joh. Kaffe in the Transparency Act inquiry. Data collection on the HRDD of Joh. Kaffe lasted until July 2023, roughly one year after the implementation of the Transparency Act. Everything Joh. Kaffe has communicated and done in terms of HRDD after this point has not been included in this thesis. As corporate understanding and implementation of HRDD is constantly evolving, I acknowledge that this may be problematic for the purpose of this thesis. However, constant surveillance of HRDD-implementation of a single company is outside the scope of this thesis.

## 4.2 Benefits for Brazilian rightsholders

To gain insights into the Brazilian context of coffee production and labor rights, I have collected a combination of primary and secondary data. Firstly, I spent five weeks in Brazil between 26 January and 2 March 2023. Most of the time was spent in the South of Minas Gerais, the main coffee producing region in the country, where I was based in the cities of Guaxupé and Varginha. Here, I visited two of the Brazilian suppliers of Joh. Kaffe – Cooperativa Regional de Cafeicultores em Guaxupé LTDA (‘Cooxupé’) and ECOM Agroindustrial Corp. Ltd (‘ECOM’), and coffee farms in their value chain, as well as the

Brazilian civil society organization ('CSO') ADERE-MG<sup>5</sup> and local trade unions. I conducted semi-structured interviews with around 30 people with different roles in the Brazilian coffee chain. See Appendix C for an overview of interviewees in Brazil. Secondly, in addition to primary data, I have used existing research, Brazilian white papers, governmental websites, and reports, as well as CSOs reports, such as from the NGO Oxfam Brazil and Brazilian newspapers, as well as key documents and reports from Joh. Kaffe's Brazilian suppliers and other actors relevant for Joh. Kaffe's HRDD.

### 4.3 The design and implementation of the Transparency Act

To fully understand the Transparency Act as mHRDD legislation I have mainly used written documents in different forms. The legal text as well as its pre-work have been key sources of information to get insights into the purpose, history, and scope of the Act. Another key source of data about the Transparency Act has been the websites of the Consumer Authorities (Consumer Authority, 2023), as they are the entity enforcing the Act as well as providing guidance for how the companies are to comply with the Act. I also conducted exploratory conversations with drafters of the Transparency Act at the beginning of the research process to decide on the angle of the thesis.

The legal text of the Transparency Act and the websites of the Consumer Authorities explicitly refers to the UNGPs (United Nations, 2011) and guiding documents from OECD as the standards and policy documents conceptualizing and operationalizing the corporate respect for human rights. Consequently, these documents constitute key sources to understand the context and content of the law. The OECD Guidelines for Multinational Enterprises on RBC were revised and updated in June 2023. Due to time constraints, I have not prioritized to incorporate the changes in this thesis, which can be considered a limitation. Finally, I have drawn upon findings in existing research on the Transparency Act, primarily from Krajewski et al. (2021) and Deva (2023).

### 4.4 Collection and analysis of primary sources

To access the complexities and potential challenges of HRDD in the chosen case, I have chosen to conduct semi-structured interviews with a variety of actors in Norway and Brazil

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<sup>5</sup> ADERE-MG (Articulação dos Empregados Rurais do Estado de Minas Gerais) is a Brazilian CSO that works to combat labor rights violations in rural areas of MG.

through a myriad of techniques. The interviewees were selected based on their experience with the Norwegian-Brazilian value chain of coffee, as well as labor rights in Brazil, and includes 29 informants, representing a broad range of stakeholders.

#### 4.4.1 Approaching interviewees

I have considered human interaction necessary to fulfill the purpose of the research (Kvale & Brinkmann, 2015). The main purpose in mind when approaching people to inform my research was to get in touch with people who are directly participating in the GVC of coffee in Norway and Brazil, and those external to the chain with different kinds of relevant expertise. This approach has led to a combination of hand-picked and snowball sampling (O’Leary, 2017), where I started to approach certain actors which again indicated other actors relevant to inform my research. I have had a rather straight forward process in Norway of e-mailing with the actors who I have wanted to get in touch with, who have mainly responded quickly and been interested to inform my research. A contributing factor to the ease of the process could be my Norwegian background.

Before doing fieldwork in Brazil in February 2023, I instigated three parallel processes to get in touch with potential informants in the country. First, through my CSO network in Brazil and Norway to get access to perspectives from CSOs, workers and other actors. Second, through the Norwegian coffee organization Norsk Kaffeinformasjon, who got me in contact with companies, organizations, and experts on the Brazilian coffee industry. Third, through Joh. Kaffe for their suppliers and contacts in Brazil. I consider these three approaches to complement each other to a certain extent, to achieve a broad variety of perspectives on the process of HRDD and how it plays out in the Brazilian context of coffee production and labor rights.

When choosing and engaging with participants, I have not tried to be representative in a way that the sample distribution and characteristics allow findings to be generalized back to a relevant population. However, it has been my aim to get access to perspectives from a broad range of actors with different roles in the value chain of coffee between Norway and Brazil. Starting at the Norwegian end of the value chain, this has included sustainability managers and traders of coffee in Joh. Kaffe and Norgesgruppen, in addition to coffee experts in Norway. In Brazil, I conducted interviews with various representatives of two of Joh. Kaffes Brazilian suppliers, the coffee cooperative Cooxupé and the international trading company ECOM. Participants from these two companies ranged from sustainability managers and

traders to employees working with quality and traceability as well as technical assistants and agronomists who are the main point of contact between the companies and the coffee producers.

Farm owners and farm workers are the actors considered rightsholders in the context of HRDD on labor violations, whose perspectives have been important to access the local context in Brazil. The three Brazilian coffee farmers I have talked to have been approached through the Brazilian coffee companies Cooxupé and ECOM. The two workers coffee farms have been approached through my CSO network in Brazil. The Brazilian CSO ADERE-MG has been a key actor in this regard. They put me in contact with workers and their representatives in the form of local trade unions in Minas Gerais and was themselves key informants, both as interviewees and by directing me towards relevant documents on the Brazilian context of coffee and labor rights violations. Due to the complexity and lack of transparency in the coffee chain, it is not known if the workers informing this research is, or have been, part of the value chain of Joh. Kaffe.

#### 4.4.2 Conducting semi-structured interviews

The personal interactions I have had with people during the research process have been varied in nature, purpose, and content. For simplicity's sake, I will refer to all these interactions as interviews. All interviews conducted were semi-structured, open-ended, and refined for each participant. As recommended by Kvale and Brinkmann (2015), I prepared all my conversations with an interview guide which structured the interview to varying degrees. The main topic of exploration in all interactions were the corporate responsibility for human rights. Some interviews merely had this main topic to explore, while others had several concrete questions which I aimed to go through during the conversation. Each conversation started with an introduction of myself and the topic of my thesis, as well as a justification for why I was interested in talking to the person(s) in front of me. See interview guides in Appendix A & C for a more detailed overview of the content of conversations and examples of questions asked to different actors.

I have conducted different types of interviews during data collection, depending on context. The interviews have differed in terms of both level of formality and duration. The more formal interviews where “the interviewer attempts to be removed from the interviewee and maintains an objective stance” (O’Leary, 2017, p. 239) have mostly been what I would

characterize as elite interviews (Kvale & Brinkmann, 2015). These are interviews conducted with company representatives in Norway and Brazil, which have mostly been one to one in corporate meeting rooms, and with more pre-determined structure and questions. Other interview settings have been more informal, such as when I have visited coffee farms with company agronomists and interviewed farm owners while walking around on the farm and/or sitting around a table drinking coffee. Another example of an interview situation was a four-hour long meeting with ten representatives from Brazilian civil society at a meeting room. Here, I only had some main topics of conversation, and was also asked questions from the interviewees.

One key factor influencing the nature, scope, and purpose of each conversation, has been the ‘role’ of the interviewee in the coffee chain and Brazilian context of labor rights. This is because I have assumed that each person’s position influences their knowledge and perspective. I have aimed to address this ‘reduction’ of the interviewee to its role in the coffee chain by asking quite general and informal questions at the beginning of each interview situation.

#### 4.4.3 Techniques to collect and analyze primary data

To capture the answers from interviewees, I used a mixture of note taking, audio recording and post-interview data dump (O’Leary, 2017, p. 247). The initial plan was to use audio recording. However, due to disadvantages of audio recordings such as “the unease it can cause for the interviewee” (O’Leary, 2017), I mostly did note taking. In the settings where it felt natural, I asked if I could record the conversation – that is, in the settings where I did not feel it would ruin the relationship or flow of the conversation. Some were ok with recordings, other preferred note taking, and some informants made use of such interactions to refer me to official documents.

The recordings were downloaded into and automatically transcribed in UiO smarttext, from Norwegian to English and Portuguese to English. I then listened to the recordings while reading the suggested transcription and made changes as necessary to capture the content and essence of the conversations and avoid significant differences from oral to written data. As for the written notes taken during conversations, which were more incomplete, I tried to write these out into complete sentences as soon as possible after the conversations took place, to make sure the statements were as accurate as possible. I have been careful to keep the

statements in their given context, to not take them out of context and make sure the text is loyal to the participants oral statements. However, all interviews have been conducted in and translated from Norwegian and Portuguese to English. During interview situations and translation, nuances of meaning may have been lost.

As for analyzing case study evidence, this is one of the least developed aspects of doing a case study, and few to none fixed formulas exist to use as guide (Yin, 2018, p. 165). For my research, I have considered thematic analysis (Bryman, 2016) the most suitable approach. While I had no pre-determined categories beyond the overall topic of corporate responsibility for human rights, themes within this topic have emerged and changed inductively during the collection of data as well as during the analysis. Examples of themes are certifications, transparency, economic inequality, and labor rights.

#### 4.5 Positionality

A reflexive researcher constantly assesses, reassesses, and make decisions about “the best possible means for obtaining trustworthy information, carrying out appropriate analysis and drawing credible conclusions” (O’Leary, 2017, p. 10). My positionality determines how I access and perceive the reality around me, and my experiences, knowledge and values have affected the different phases of the research. This includes choice of case, methodological design, the practical implementation, and the interpretations of the empirical reality. As such, I aspire to be transparent about my own background and rationale for choices, as well as the process. Moreover, my role and performed identity, necessarily shape what the participants in this study have shared with me, why they have chosen to participate, as well as what they expect regarding outcomes of the interaction and the thesis. This again will necessarily shape me and the research process. I find it especially important to be reflexive and transparent of my role as a young, white, and Norwegian female researcher, especially in Brazil, and as an activist in Norwegian and at times Brazilian, sphere of CSOs.

My many years as an activist and student of human geography in Norway and Brazil has by no doubt led to deciding on the main topic and approach of this thesis, which is corporate responsibility for human rights in global value chains. Human Geography is a discipline explicit in its aim of producing critical knowledge, contribute to liberating social change and make the world a better place (Jordhus-Lier & Stokke, 2017). During my years as a student, first in Human Geography and now the interdisciplinary program *Development*,

*Environment and Cultural Change*, a central theme and aspiration has been to shed light on and question power structures and inequalities benefitting some at the expense of others. This is inevitably why I chose these studies in the first place, and why I have chosen the topic and approach of this thesis. As such, the contributions in this thesis are driven by a normative commitment to understand, and thus hopefully make a small contribution to prevent and address, adverse human rights impacts linked to corporate activities in GVCs.

## 4.6 Ethical considerations

Since human interaction through interviews has been a key method of collecting data, my research process has been accompanied by several ethical considerations (Kvale & Brinkmann, 2015). This section addresses the ethical considerations accompanying my choice of methods.

### 4.6.1 Navigating conflicting perspectives in Brazil

From previous time in and knowledge about Brazil, I am familiar with the social challenges and polarization characterizing the rural and agricultural sphere of the country. Before conducting fieldwork, I had read up on the particularities of coffee production and the prevalence of informality and indecent working conditions in the sector. Consequently, I took great precaution when considering who to contact for participating in my research in Brazil, and how. Ethical concerns related to the selection of participants were especially related to the access of rightsholders perspectives in the value chain, both farm owners and farm workers. I got in contact with farm owners through the Brazilian suppliers of Joh. Kaffe. Technical assistants from Cooxupé and ECOM accompanied me to the farms and thus participated in the conversations with the farmers. To approach farm workers – hired labor, I did not find it ethical or appropriate to get in touch with workers through the companies' farm owners, who are their employers and legally responsible for their working conditions. Consequently, I chose to use my CSO network in Brazil to get in touch with workers and their representatives. In retrospect, I could have approached small-scale farm owners as well, as they are also vulnerable and in a different position than the farmers that I was put in touch with by the Brazilian supplier companies of Joh. Kaffe.

Joh. Kaffe were the ones putting me in contact with their Brazilian suppliers. Being introduced to Brazilian coffee exporters through an actor they are familiar with and confide in has been a strength for collection of data. However, I had hoped it would be possible to get in

touch with Brazilian coffee companies without the involvement of Joh. Kaffe. This was due to the ethical considerations of navigating the relationship between Joh. Kaffe and their Brazilian suppliers, before, during and after interaction, when reporting findings. However, due to time constraints and practicalities, this was not possible. This way of getting in touch with Brazilian companies makes me extra aware of respecting the relationship between Joh. Kaffe and their suppliers, which may influence the conducting of interviews as well as reporting. It has also been extra challenging to explain that I was in Brazil as a researcher, and not as a company representative, thus potentially challenging the integrity of my research.

#### 4.6.2 Managing power asymmetries

Before and during personal interactions with informants, I tried to bear in mind how the interaction affected the interviewees in different ways, and to have a conscious approach to balancing out the power relations which may arise as a researcher meets a non-researcher (Kvale & Brinkmann, 2015). This was particularly important in Brazil, and in meetings with participants such as rightsholders, where the conversations inevitably were more personal as I knew were facing several challenges related to labor rights and living wages, and interlinked vulnerabilities. I, on the other hand, am privileged enough to travel from Norway to Brazil to conduct these conversations. Consequently, I aimed at being transparent with participants about my knowledge gaps in combination with my genuine desire for gaining new insights and to construct knowledge together with the interviewees which I hoped would/will benefit them. However, I acknowledge that it is difficult, if not impossible, to completely avoid the asymmetrical power relations characterizing these interview situations (Kvale & Brinkmann, 2015).

The personal interactions have been characterized by varying degrees of power asymmetries, depending on the context of interaction. While the example above could be characterized by high power asymmetries in my favor, other conversations have been characterized by less power asymmetries, and sometimes not necessarily in my favor. Examples of such interactions are the conversations I have had with highly educated, well-paid corporate employees, especially those who were male, white, and older than me. These participants also met with me as a part of their working day, making the interaction less personal than the interactions with rightsholders such as farmers and farm workers.

As for openness of purpose (Kvale & Brinkmann, 2015), I have aimed to be as transparent as possible with the people I have talked to, from the minute I approached them, throughout the conversations and in the aftermath of interactions. I did not have a fixed question going into the conversations, and my process has been explorative, and I also considered it purposeful for the research that subjects perceived to have – and had – agency in the research process by voicing their perspectives and concerns. A central aspect of this was to emphasize in the beginning why I wanted to hear from them and the significance of their voice and perspective to my research. I have chosen to be candid with all the people who have informed my research and offered full disclosure of the nature of my study (O’Leary, 2017, p. 252), both due to ethical considerations and to build trust to gain better access to the lived realities of the participants.

I first and foremost consider the choice of Brazil a strength, given my knowledge from and of this geographic context, as well as access because of my Portuguese skills and contacts in the country. Still, it is worth expressing some of my reflections on where this positions me in my research process and in relation to the participants in the process. The knowledge obtained and what participants have shared with me have been influenced by this. Fieldwork in Brazil can be considered respectful, that I want to meet people and talk to them, in their language, in their country. On the other hand, it might enforce existing power structures between me as a researcher and the interviewees, showing that I am privileged enough to travel from Norway to Brazil in the first place. This is a difficult moral dilemma, which I hope all interviewees feel I have addressed in a considerate way.

#### 4.6.3 Access to the Brazilian context of coffee and indecent working conditions

I have conducted research on and in the Brazilian context of HRDD implementation without being a Brazilian. Due to time and financial constraints, I only spent five weeks in Brazil to collect primary data, giving me a limited time to approach potential informants and conduct interviews. To address this limitation, I started to approach potential informants before arriving in Brazil, as well as inform myself on the Brazilian context of coffee and labor rights.

Moreover, the harvest period of coffee in Brazil is between May and September, while I was there 26 January to 2 March. Being present during the harvest may have provided additional insights from workers on Brazilian coffee farms. As many of the workers on Brazilian coffee farms during the harvest period are migrants, they return home – to the North

of Minas or Bahia - after the harvest. This made it more difficult for me to talk to migrant workers, who are characterized as more vulnerable to labor exploitation. However, being in Brazil before the period of harvest was also intentional, as it is difficult to get access to all workers – not only migrant workers - outside of the farms while the harvest period is happening. Which leads me to what I consider the key challenge of this research: the limited access to the perspectives of Brazilian rightsholders, both farm owners and workers. This thesis is about indecent working conditions in GVCs, and although some of the participants in Brazil have been workers on coffee farms and thus informed my research, I initially hoped that more of the participants would be workers. Due to the vulnerable situation of workers and limited ethical ways of getting in touch with workers, this would have required more time, in Brazil and for the whole research process, and preparedness.

#### 4.6.4 Confidentiality and protection of interviewees

This research project has been approved by and conducted in accordance with the requirements of the Norwegian Agency for Shared Services in Education and Research (SIKT). I am the only one with access to sensitive data, which is protected by anonymization and multifactor authentication. All participants were informed of the purpose of the conversation, asked for consent, and informed of their right to withdraw consent at any time. None of the participants were unfit to give their own consent. I originally planned on obtaining written consent from all participants but realized quickly that this was hard to achieve in practice in Brazil. This was first and foremost due to language – academic and Portuguese - and sensitivity concerns. Therefore, I chose to switch to oral consent.

All participants have remained anonymous when collecting, analyzing, and reporting data. However, there are three companies mentioned by name in this thesis, and although I have tried to anonymize the subjects from the companies who participated in the research, it has been challenging to balance these ethical concerns with the purpose of the thesis. To provide an example, I have found it necessary to mention the role of the interviewee in the company to make an argument. In some cases, there are only one person with that role in the company, which consequently uncover the identity of the participant. However, as these are all corporate representatives, I have considered it ethically justifiable when weighing up against the concerns of rightsholders.

For the conversations I have recorded, I have used Autotekst.uio.no, a tool to automatically transcribe speech to text by using Whisper from OpenAi. The service runs

entirely on the servers of the University of Oslo (UiO), thus no data abandons the UiO infrastructure (University of Oslo, n.d.). Many of the interviews have been without sound recording, depending on the context. In these cases, I have asked for consent to take notes during the conversations.

4.6.5 Receiving gifts as a researcher

During the period of field work in Minas Gerais in Brazil, I received material gifts from some of the participants. Gifts have been interpreted as “an invitation to partnership”, and the forging of social bonds, encouraging reciprocation (Sherry, 1983, p. 158). Consequently, I have reflected on how receiving these gifts have influenced the way I analyze and report the data collected. Donors and recipients of gifts may be either individuals or corporate groups, where ‘corporate’ is to be understood in the anthropological sense of “a group recognized and empowered to act as a single unit” (Sherry, 1983, p. 160). In my case, all material gifts received were organizational and company merchandise from companies, trade unions and farms I visited and talked to. Consequently, I consider all material gifts as corporate gifts.

By choosing to interact personally with people as a part of the methods chosen for this thesis, the time people have spent could also be considered a gift and may have influenced me to a greater extent than receiving material gifts. That said, I acknowledge the ethical considerations related to gift giving in a material sense between a researcher and participants and consequently wish to be transparent about the material gifts I received during the fieldwork. For you as a reader, but also for me, to reflect upon the ethical aspects and how it may have interfered with the research process forming this thesis. Following is a list of the material gifts received and their donors:

TYPE OF GIFT	DONOR
<b>Almanac</b>	Trade union
<b>Coffee beans, coffee cup and notebook</b>	Coffee farm
<b>Lunch</b>	Coffee company
<b>Book and coffee filters</b>	Coffee company

## 4.7 Summary

In summary, I conduct a qualitative case study that draws upon documents and interviews, as well as secondary literature to answer the three elements of my overarching research question. Joh. Kaffes stated measures to address the identified risk of labor rights violations in their Brazilian value chain have been used as the analytical framework through which I have analyzed and reported the data collected. As such, the data collected is presented in chapters 5 and 6, where chapter 5 is a presentation of what Joh. Kaffe is doing in terms of HRDD, and chapter 6 is an analysis of these measures using other data collected, primary and secondary, during the research process.

## Chapter 5 Joh. Kaffe's implementation of HRDD

This chapter provides a descriptive account of Joh. Kaffe's communicated implementation of HRDD in their Brazilian value chain of coffee. Firstly, I present a framework for how Joh. Kaffe is expected to implement HRDD according to the UNGPs, and how this occurs in practice. Furthermore, I show how Joh. Kaffe has identified a high risk of severe labor rights violations on Brazilian coffee farms (5.1). Thereafter, the next three subchapters describe the three main measures implemented by Joh. Kaffe to address this risk, as well as the communicated rationale behind the steps taken. The first tool is Joh. Kaffe's choice of, and relationship with, their Brazilian first-tier suppliers (5.2). The second is the purchase of Rainforest Alliance ('RFA') certified coffee (5.3), and the third is Joh. Kaffe's participation and collaboration in International Coffee Partners ('ICP') (5.4). Finally, I summarize (5.5) before proceeding to the next chapter, where I analyze what extent Joh. Kaffe's HRDD measures benefit wage workers on Brazilian coffee farms.

### 5.1 The nature of Joh. Kaffe's HRDD

What is expected from a company regarding their HRDD process is highly context-sensitive and depends on several factors. These factors include company size and capacity, the product in question and the geographical context of operations, as well as the company relationship to potential and actual adverse human rights impacts (United Nations, 2011). In this section I will define Joh. Kaffe as an actor in the context of HRDD implementation, and thus present a framework for how one can expect Joh. Kaffe to implement HRDD in their Brazilian value chain of coffee. To develop the framework, I have combined existing research with the UNGPs and guiding documents from OECD. As coffee is an agricultural product, I have considered the relevant guidance<sup>6</sup> for this case study to be the *OECD-FAO Guidance for Responsible Agricultural Supply Chains* ('OECD-FAO Guidance'), developed by OECD and the Food and Agriculture Organization of the United Nations ('FAO') (OECD-FAO, 2016).

As for company size, the bigger the company, the more is expected in terms of HRDD. Joh. Kaffe is defined as a large enterprise by the Transparency Act due to its size and number

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<sup>6</sup> Due to the context-specific nature of corporate HRDD, there are several sector-specific guidelines published by the OECD aiming to provide practical guidance for companies implementing HRDD in different industries.

of employees<sup>7</sup>. As the Transparency Act only covers companies over a certain size, this indicates that Joh. Kaffe is to be considered a relatively big company with a high capacity to implement HRDD. As for type of enterprise, the OECD-FAO Guidance roughly divides into three main types of enterprises in agricultural value chains: on-site, downstream, and financial (OECD-FAO, 2016, p. 38). Joh. Kaffe does not have any on-site operations for coffee production, nor is it merely a financial investor. As an importer and roaster of coffee, I will therefore characterize Joh. Kaffe as a downstream business enterprise. This has implications for how Joh. Kaffe is linked to potential and actual adverse impacts in their value chain, and consequently how Joh. Kaffe is expected to implement HRDD both to identify and address human rights risks. Firstly, I will present how Joh. Kaffe identifies, and is expected to identify, human rights risks in their GVCs (5.1.1). Thereafter, I will present how Joh. Kaffe is expected to prevent and mitigate identified human rights risks (5.1.2), as well as the specific means through which this may occur with Brazilian suppliers (5.1.3).

#### 5.1.1 Identification of human rights risks

The first step of the HRDD process is to identify the risk of human rights violations which the company may cause, contribute to, or be linked to. Consequently, Joh. Kaffe is expected to map their value chain and identify both actual as well as potential human rights violations which is linked to “the operations, processes, goods and services of the enterprise and its business partners” (OECD-FAO, p. 36). As a downstream enterprise, Joh. Kaffe is expected to “not only identify risks in their own operations but also, to the best of their efforts, assess the risks faced by their suppliers” (ibid., p. 38). In other words, the company should conduct enhanced HRDD if a high risk of linkage to human rights violations is identified for its business partners due to the product or geographic origin, and/or if the business partner does not have sufficient systems in place to address this risk (OECD-FAO, 2016).

According to interviews with Joh. Kaffe (see Appendix A) and the Transparency Act inquiry (see Appendix B), Joh. Kaffe is aware of the human rights risks at the producing end of the coffee chain. As such, Joh. Kaffe has conducted a geographic and thematic risk assessment, where severe labor rights violations on Brazilian coffee farms have been identified as a high-priority risk for the company. The risk assessment of Joh. Kaffe is based on a myriad of sources: “1) ITUC, Business Social Compliance Initiative (‘BSCI’),

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<sup>7</sup> Joh. Kaffe had 90 employees and a reported 1 364 394 000 NOK turnover in 2022 (Joh. Kaffe, 2023, p. 6).

Transparency International and Bureau of International Labor Affairs; 2) Research based articles and reports; 3) Supplier answers in self-assessment forms; 4) Information from the certifying organs RFA, Debio and Fairtrade; and 5) International Coffee Partners (ICP) and Coffee & Climate” (Joh. Kaffe, 2023, p. 22).

In 2023, three out of the four prioritized risk areas in terms of human rights for Joh. Kaffe were related to labor rights violations and a lack of living wages in coffee producing countries (Joh. Kaffe, 2023). A high risk of unstable living wages was considered a concern in all countries from which their coffee is imported, in addition to a general concern for workers health and safety due to the increased use of agrochemicals in combination with a lack of protective gear (ibid.). Additionally, Joh. Kaffe identified a risk of lack of freedom of association and collective bargaining in Brazil and Colombia (ibid.). According to the risk assessment conducted by Joh. Kaffe, “Brazil has higher wages and stricter social and environmental requirements than most other coffee producing countries. According to ILAB (US Department of Labor), Brazil is nevertheless the only major coffee producing country where forced labor may occur during production” (Transparency Act inquiry, 2022). How Joh. Kaffe is expected to address this identified risk of labor rights violations will be presented in the following section.

### 5.1.2 Prevention and mitigation of human rights risks

After having identified and assessed the potential and actual human rights risks in their value chain, Joh. Kaffe is expected to integrate the findings from this assessment and take “appropriate action” to prevent and mitigate adverse human rights impacts (United Nations, 2011, p. 20). According to the UNGPs, appropriate action will vary according to “(i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products, or services by a business relationship; [and] (ii) The extent of its leverage in addressing the adverse impact” (United Nations, 2011, pp. 20–21). Leverage is considered to exist “where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm” (United Nations, 2011).

In other words, the appropriate action depends on the companies’ different relationships to the actual and potential adverse impacts, and the corporate power to influence the entity causing the effects to halt them (OECD, 2018). As is the case with innumerable

aspects of the process of HRDD, there are no clear-cut definitions on what constitutes a cause, contribution, or linkage relationship to adverse impacts in GVCs. However, in the coffee chain in general, and for Brazil more specifically, the high risk of labor rights violations is identified mainly on the coffee farms. As a downstream enterprise, Joh. Kaffe does not have any direct operations in Brazil, and consequently not direct control over the working conditions on Brazilian coffee farms. As such, I consider that Joh. Kaffe does not have the direct power to cease or prevent human rights violations on Brazilian coffee farms. Rather, I here assume that Joh. Kaffe can be considered – according to the UNGPs - to be ‘merely’ linked to potential and actual labor rights violations through business relationships with its Brazilian suppliers. In other words, that Joh. Kaffe is associated with actors who infringe on human rights and should consequently use its leverage to influence the actors who are causing adverse impacts (Mares, 2018; OECD, 2018; OECD-FAO, 2016).

If leverage over suppliers is not sufficient to effect change in harmful conduct, it should be increased, e.g. through capacity building or other incentives to the related entity, or by collaborating with other actors (United Nations, 2011, p. 22). If it is not possible to increase leverage and/or leverage is not working to cease adverse impacts, Joh. Kaffe is expected to consider termination of business relationship (OECD, 2018; OECD-FAO, 2016). However, this should only be considered as a last resort, and must also be considered carefully not to increase the risk of human rights violations by terminating relationship (OECD, 2018). In any case, for as long as human rights violations occur and the enterprise remains in the relationship, Joh. Kaffe should be able to demonstrate its own ongoing efforts to mitigate the impact (United Nations, 2011, p. 22). Furthermore, the company must answer for any benefit they derive from the harmful conduct of a third-party (Mares, 2018). In deciding how to respond, the company should draw on independent expert advice the more complex the situation and its implications for human rights is (United Nations, 2011).

### 5.1.3 Exercising leverage over Brazilian first-tier suppliers

In a world of GVCs, the corporate responsibility to respect human rights includes engaging with suppliers on their approach to this issue (Castaldi et al., 2023). Due to Joh. Kaffe’s position in the coffee chain as ‘merely’ an importer of coffee from Brazil, the relationship to their Brazilian suppliers is essential to Joh. Kaffe’s HRDD. Joh. Kaffe reported to have 28 first-tier suppliers in 16 countries in 2022, three of them in Brazil (Joh. Kaffe, 2023). McCorquodale et al. (2017) and Smit et al. (2021) provide valuable insights into how

companies understand their responsibility to address human rights risks in GVCs through suppliers. Here, the responsibility of the company becomes “a responsibility to exercise leverage over the third party before termination of the relationship is contemplated” (Mares, 2018). While existing research does not provide any conclusions on whether the corporate conduct of HRDD – the measures below – are efficient in their purpose of prevention and mitigation, they point towards the emerging practices within HRDD and what to expect from Joh. Kaffe.

As a part of their human rights responsibility, companies are expected to “communicate key aspects of the Responsible Business Conduct (RBC) policies to suppliers and other relevant business relationships” and “include conditions and expectations on RBC issues in supplier or business relationship contracts or other forms of written agreements” (OECD, 2018, p. 24). Contractual provisions and Codes of Conduct (‘CoC’) have been identified as two of the key tools’ companies employ to prevent and address adverse human rights impacts in GVCs (McCorquodale et al., 2017; Smit et al., 2021). Companies also integrate human rights into tender documents and questionnaires, and offer suppliers external human rights training and capacity building (Smit et al., 2021). With complex and opaque GVCs, collaboration with other actors is considered a way for companies to increase and exercise leverage when they as a single company perceive that they are unable to address human rights challenges alone (McCorquodale et al., 2017; Smit et al., 2021). Collective leverage approaches should especially be considered when a company is facing systemic human rights issues (Working Group on Business and Human Rights, 2018), such as labor rights violations at the producing end of the coffee chain. In theory, this passing forward of HRDD obligations should create a trickle-down effect through the entire supply chain (Smit et al., 2021).

Respecting human rights is a costly business (Deva, 2020), and buying-companies’ purchasing practices often contradict their own HRDD requirements, exacerbating the economic difficulty some suppliers may face to implement respect for human rights in their business operations (Smit et al., 2021). Consequently, companies implementing HRDD in business relationships are further expected to ensure that the human rights requirements placed on their suppliers align with their own purchasing practices (OECD, 2018). It is also important to mention that, while companies seemingly understand the shortcomings of the more traditional responsibility tools such as social audits (Smit et al., 2021). Social auditing is claimed to still be one of the primary tools by companies implementing HRDD

(McCorquodale & Nolan, 2021; Nolan, 2022; Nolan & Frishling, 2020). And on that note, I wish to briefly address the debate on the role of Voluntary Sustainability Standards (‘VSS’) in HRDD (Partiti, 2022).

VSS emerged in the 1990s, partly in response to the perceived failure of public governance to constrain the adverse impacts of business enterprises on human rights (Bennett, 2022). Since then, the use of VSS has been a dominant approach to regulate the effects of business on human rights in GVCs, by proposing a solution to the governance gaps related to BHR (Nolan, 2022; Schilling-Vacaflor & Lenschow, 2021). The global coffee industry is considered a pioneer in the implementation of VSS, which has been the main strategy adopted by coffee companies to address the social challenges in the chain, often in the form of different certification schemes (‘CS’) (Barreto Peixoto et al., 2023). As such, the use of different VSS is a widespread responsibility tool in the global coffee industry, making the chain an interesting case of exploring the relationship between VSS and HRDD in the context of mHRDD laws.

To address the risk of labor rights violations, Joh. Kaffe has communicated that they believe their work with “certification schemes, International Coffee Partners, Coffee and Climate, and not least our long-term relationships with suppliers reduce the risk of something unwanted happening” (Transparency Act inquiry, 2022). These three measures will now be elaborated on in the following three subchapters.

## 5.2 Engagement with first-tier suppliers

The first measure communicated by Joh. Kaffe to address the high risk of labor rights violations on Brazilian coffee farms, is the nature of their relationship to their Brazilian first-tier suppliers (Transparency Act inquiry, 2022). The meaning of this will be elaborated on in this subchapter. In brief, Joh. Kaffe has their own policy on human rights which they expect their suppliers to comply with. These expectations are communicated to suppliers through documents, questionnaires, and visits, and Joh. Kaffe aims to align its’ own purchasing practices with these expectations. Furthermore, Joh. Kaffe only purchases RFA certified coffee from Brazilian suppliers, which will be elaborated on in 5.3.

### 5.2.1 Integrating human rights expectations in business relationships

Joh. Kaffe has their own ethical guidelines based on UN and ILO conventions on internationally acknowledged labor and human rights, which aim to inform employees of Joh. Kaffe as well as their business partners about their expectations regarding respect for human rights (Joh. Kaffe, 2023). In addition to publish their ethical guidelines and sustainability policy on their websites, Joh. Kaffe has since 2003 regularly sent CoC for their first-tier suppliers to sign. Today, these documents include Ethical guidelines, Sustainability policy and CoC (Sustainability manager - Joh. Kaffe, Nov 2022).

According to Joh. Kaffe, their long-term relationship with their suppliers is a risk minimizing tool (Transparency Act inquiry, 2022). While Joh. Kaffe states that it is not often they replace suppliers, their current and potential suppliers are continuously assessed, and the number of first tier suppliers is not a static one (Sustainability manager - Joh. Kaffe, March 2023). When choosing Brazilian suppliers, Joh. Kaffe needs suppliers who can supply RFA certified coffee, meet their ethical and sustainability demands, the preferred tasting profile as well as suppliers who can provide them with large volumes of coffee (Sustainability manager - Joh. Kaffe, Nov 2022). Furthermore, Joh. Kaffe believe the purchase of coffee from suppliers who contribute with positive measures for the coffee farmers is a key means to achieve living wages in their supply chains (Joh. Kaffe, 2023). Examples of such measures are providing technical assistance, cheaper loans, purchase guarantee for the crops of the members, educational assistance, business advice and training (ibid.).

Since 2018, Joh. Kaffe has been sending out self-assessment forms for all their first-tier raw-material suppliers to fill out. Joh. Kaffe is continuously evaluating and revising these to ensure they get the answers they need to find out how conditions are (Sustainability manager - Joh. Kaffe, Nov 2022 & March 2023). In addition to integrating responsibility expectations into business relationships, the communicated purpose of the self-assessment forms is to find out whether their suppliers have systems and policies, their own goals and targets, and how the suppliers work with human rights in their own supply chains. When answers are inconsistent, this is followed up with the relevant supplier. Depending on the concern, Joh. Kaffe sends follow-up questions or asks suppliers to send them copies of documents, etc. If the answers are lacking and unsatisfying, the sustainability manager and purchasing director of Joh. Kaffe do an evaluation on what to do with the relevant supplier (Sustainability manager - Joh. Kaffe, March 2023).

### 5.2.2 Communicating labor rights concerns to Brazilian first-tier suppliers

Labor rights and indecent working conditions are among the current key concerns that Joh. Kaffe communicates to their first-tier suppliers (Sustainability manager - Joh. Kaffe, March 2023). To address the lack of freedom of association in their value chain, Joh. Kaffe states that they during 2023 will send out revised Ethical Guidelines and Sustainability Policy to all suppliers and business partners, which emphasize the importance of freedom of association more than before (Joh. Kaffe, 2023). The self-assessment forms distributed by Joh. Kaffe also include questions designed to understand their suppliers' work on labor rights and ethical requirements further down the value chain. In general, "first tier suppliers are chosen carefully and must answer self-assessment forms and sign CoC for Joh. Kaffe to consider if suppliers have policies and objectives they are working towards to achieve and assess whether their work seems sufficient to ensure decent conditions in the chain" (Sustainability manager - Joh. Kaffe, March 2023).

In Brazil, Joh. Kaffe has four suppliers, which have all signed Joh. Kaffe's CoC and are members of CeCafé (Brazilian Coffee Exporters Council), where climate and labor rights are important focus areas (Transparency Act inquiry, 2022). Letters of information on different subjects are also sent out, such as on freedom of association and collective bargaining sent out in May 2021, which together with the other documents shows their suppliers what they expect in terms of labor rights and working conditions (Sustainability manager - Joh. Kaffe, March 2023). The social and environmental concerns expressed in these policies and guidelines are reiterated and discussed during visits to suppliers (Sustainability manager - Joh. Kaffe, March 2023). Joh. Kaffe has conducted country visits to Brazil roughly once a year for the last 20 years, with some exception during the Covid-19 pandemic in 2020 and 2021 (Sustainability manager - Joh. Kaffe, Nov 2022; Trader - Joh. Kaffe, Jan 2023). Joh. Kaffe has also been in direct contact with Brazilian suppliers about unionizing, latest during supplier visit in March 2023 (Sustainability manager - Joh. Kaffe, March 2023).

According to Joh. Kaffe, their Brazilian first-tier suppliers are informed about the entry into force of the Norwegian Transparency Act, and that Joh. Kaffe aims to work together with their current suppliers to ensure they meet the HRDD requirements in the Transparency Act (Sustainability manager - Joh. Kaffe, March 2023). Furthermore, Joh. Kaffe communicates that HRDD is a process, and that they cannot push their current suppliers away

if they are not currently meeting the requirements set out in the UNGPs, but rather “work with those we already have and try to influence them” (Sustainability manager - Joh. Kaffe, March 2023).

### 5.2.3 Economic purchasing practices

Joh. Kaffe purchases commercial coffee, which is traded on the so-called C-market. 95 per cent of the green coffee is traded through an agent or the exporting company in the producing countries, only 5 per cent is bought directly from producer (Joh. Kaffe, 2023). The agent is someone with licence to sell coffee for an exporting company, which functions as a sales company between the exporting company and Joh. Kaffe. In most cases, when purchasing through an agent, it will be specified which exporter Joh. Kaffe wishes to buy from. Although purchasing through an agent, Joh. Kaffe has direct contact with the exporting companies. Therefore, they know the exporters even though trading through agent (Joh. Kaffe, 2023). According to Joh. Kaffe, they aim for their economic purchasing practices to align with their responsibility demands placed on suppliers. As such, Joh. Kaffe gives annual and quarterly prognoses to producers and place orders within a reasonable time of delivery to reduce unnecessary costs for the producer, like payment for overtime (Joh. Kaffe, 2022).

When asked why Joh. Kaffe does not purchase directly from the exporters, or the coffee farmers, Joh. Kaffe claims this is because of the high volumes they purchase, in combination with the specific tasting and sustainability requirements (Sustainability manager – Joh. Kaffe, Nov 2022). “In the coffee sector there are mostly small-scale producers who will not be able to meet our volume, quality and sustainability requirements. Furthermore, you have the financial component. Joh. Kaffe trades on the New York C-market. Few of the exporters have the financial means to be economically responsible, so there is a need for an actor with the financial means and knowledge to be economically responsible to the banks and the stock market. These agents often trade other commodities as well. So, if coffee is going bad then maybe tea, sugar cane or soy is doing well’ (Sustainability manager - Joh. Kaffe, Nov 2022).

In their 2023 report to ETI Norway, Joh. Kaffe communicates that through their responsible purchasing practice they cooperate with and support their suppliers in their work to secure decent working conditions by “1) Continuous work to make sure our purchasing practice contribute to our suppliers work to meet our sustainability demands. 2) Act with respect and understanding in all dialogue and communication with our suppliers. 3) Support

our suppliers in their work to comply with the requirements of our ethical guidelines. 4) Ensure that our agreements and contract terms contribute to safeguarding and supporting suppliers work with sustainability. 5) Ensure that sourcing strategies take care of our sustainability strategy” (Joh. Kaffe, 2023, p. 30).

#### 5.2.4 Introducing Cooxupé as a Brazilian first-tier supplier of Joh. Kaffe

The Brazilian coffee cooperative and exporter Cooxupé has been one of Joh. Kaffe’s Brazilian first-tier suppliers for the last 20 years and have had a key role in informing this thesis with perspectives from Brazilian supplier companies in the coffee chain. Cooxupé is considered the world’s biggest coffee cooperative in terms of members<sup>8</sup> (Sustainability manager – Cooxupé, Feb 2023). Today, Cooxupé exports to more than 50 countries, where the biggest buyers are in Europe, the US and Japan (ibid.). The coffee received by Cooxupé comes from more than 300 municipalities in the states of MG and São Paulo (ibid.). As is the case of the coffee farmers in general, and particularly in Brazil, the producing members in Cooxupé are of great diversity, “ranging from those with 1 hectare of land producing 20 – 30 bags per year, to those who own more than 10 000 hectares of land. However, the majority – 80 per cent - of our members are small-scale producers, which means they own less than 20 hectares of land” (Manager of technical assistants - Cooxupé, Feb 2023).

As is also the case with their other suppliers, Joh. Kaffe does not trade directly with Cooxupé, but at the C-market. As such, the main part of contact between the two companies is through an agent in the Netherlands (Sustainability manager - Joh. Kaffe, March 2023). However, Joh. Kaffe visits Cooxupé on an annual basis and have also received representatives from Cooxupé in Norway (ibid.). It is the commercial section of the companies in Cooxupé and Joh. Kaffe who is the main point of contact between the companies (Trader - Cooxupé, 2023).

‘Cooxupé has been part of the picture for a long time. Not every year, but many years. When in Brazil, we always visit Cooxupé and their member farms – both where our own coffee comes from, as well as others’ (Trader - Joh. Kaffe, Jan 2023).

The headquarter of the cooperative is located in the city of Guaxupé (MG), where I spent 10 days as a part of my fieldwork in February 2023. Representatives from Cooxupé

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<sup>8</sup> The number of members vary greatly from source to source, but range from 18 000 (ESG, Cooxupé, Feb 2023) to 12 000 (Joh. Kaffe, 2023).

have been key informants of this thesis to provide me with perspectives from Brazilian coffee companies and coffee farmers. When discussing Joh. Kaffe's engagement with Brazilian first-tier suppliers for the rest of this thesis, interviews conducted with representatives from Cooxupé, including their producing members, are essential. The size of Cooxupé in combination with the high risk of labor rights violations on Brazilian coffee farms in general, indicate that there is a high-risk that human rights violations occur on farms organized in the cooperative (Sustainability manager – Joh. Kaffe, March 2023). Furthermore, there is the impression that “everyone has to go to Cooxupé occasionally to get enough coffee” (Trader – Joh. Kaffe, Jan 2023), which make Cooxupé an interesting actor when it comes to HRDD in the Brazilian coffee industry, as “everyone” buys coffee from Cooxupé and is thus involved with these impacts.

### 5.2.5 Summary

To briefly summarize, Joh. Kaffe believes their relationships with their Brazilian first-tier suppliers are essential to prevent and mitigate actual and potential labor rights violations on Brazilian coffee farms. All their suppliers have signed their CoC, and Joh. Kaffe is continuously communicating their human rights expectations to suppliers through documents, questionnaires and visits. Joh. Kaffe also state that they carefully choose suppliers who meet their human rights expectations, and who contribute to the improvement of coffee farmers livelihood. Furthermore, Joh. Kaffe aim for their purchasing practices to align with their HRDD demands. The Brazilian coffee cooperative Cooxupé has been one of Joh. Kaffe's Brazilian suppliers for the last 20 years and have a key role in informing this thesis with perspectives from the Brazilian coffee chain. As a part of, and in addition to, integrating responsibility in their relationship with first-tier suppliers, Joh. Kaffe has chosen to only purchase certified coffee, which will now be elaborated on.

### 5.3 Purchase of Rainforest Alliance certified coffee

The second tool of Joh. Kaffe's HRDD to address the high risk of labor rights violations in their Brazilian value chain is purchasing coffee certified by Rainforest Alliance ('RFA') (Transparency Act inquiry, 2022). To obtain the highest possible proportion of certified coffee in all their products during the strategy period 2021 – 2025 is mentioned as important to address the prevalence of unstable earnings for coffee producers (Joh. Kaffe, 2023). Consequently, Joh. Kaffe considers certification important for coffee farmers to obtain living wages. In Brazil, all coffee purchased is to be RFA certified. As indicated by the name, the

focus of RFA historically has been the protection and conservation of biodiversity, aimed at raising farmers' awareness of sustainable farming methods (Barreto Peixoto et al., 2023). Over time, social issues such as labor rights and living wages have evolved to become a key criteria for farmers to meet to become certified (RFA, 2022).

The 2020 standard of RFA is communicated to align with the UNGPs and OECD Guidelines, with an assess and address approach to human rights issues, in contrast to the previous pass or fail approach (RFA, 2020). The overall communicated rationale behind Joh. Kaffes choice of RFA certification in Brazil is that RFA – as a big organization with competence, context-specific knowledge, and means to work politically - perform several actions that Joh. Kaffe claims they do not have the capacity or qualifications to do themselves (Sustainability manager - Joh. Kaffe, Nov 2022 & March 2023). In terms of labor rights and living wages, Joh. Kaffe believes RFA' approach and work communicated in the policy document *Protecting Workers, Farmers and Foresters* (2022) is a good risk minimizing tool, for several reasons (Transparency Act inquiry, 2022).

First, RFA is responsible for revisions of all the supplier companies and coffee farms in the value chain against their communicated criteria. As Joh. Kaffe does not have the capacity to visit every first-tier supplier or coffee farm, the purchase of RFA certified coffee ensures that each certified farm annually is audited by an independent organ (Sustainability manager - Joh. Kaffe, Nov 2022). Second, RFA provides support and training for certified producers, also in terms of labor rights, contributing to farm owners implementing labor management systems that are aligned with responsible recruitment practices and principles of decent work (RFA, 2022; Sustainability manager - Joh. Kaffe, Nov 2022). Third, the work RFA does in terms of political advocacy where they monitor and participate in political processes in Brazil to promote decent work, such as support state initiatives to adopt and enforce mHRDD laws (Sustainability manager - Joh. Kaffe, Nov 2022). Fourth and finally, RFA certified farmers are to receive a premium, alias higher prices, for their sold RFA products. In addition to ensuring farmers livelihoods, Joh. Kaffe believes the higher incomes from RFA certification enable farmers to afford to pay workers timely and decent wages (Joh. Kaffe, 2023; RFA, 2022). Furthermore, RFA collaborates with Fairtrade to ensure living wages globally for coffee farmers (Joh. Kaffe, 2023).

## 5.4 Collaboration in International Coffee Partners

The third tool identified is Joh. Kaffes collaboration with other family-owned, European coffee houses in International Coffee Partners ('ICP'). While one of the biggest actors on the Norwegian coffee market, Joh. Kaffe do not consider themselves big enough to effect positive change in the global coffee industry alone (Sustainability manager - Joh. Kaffe, March 2023). As such, Joh. Kaffe considers it essential to collaborate with other coffee companies through ICP to address social and environmental challenges in the coffee industry (ibid.).

ICP was founded in 2001 and is today an organization made up of eight family-owned, European coffee companies, where Joh. Kaffe joined as shareholders in 2011. The other members are the Neumann Gruppe (Germany), Lavazza (Italy), L fbergs (Sweden), Paulig (Finland), Tchibo (Germany), Franck (Croatia) and Delta Caf s (Portugal). ICP characterize themselves as a democratic joint not-for-profit corporate venture, aiming to improve the livelihoods of small-scale coffee farmers by making their production more competitive, based on sustainable practices. The continuation of Joh. Kaffes work in ICP and C&C<sup>9</sup> is explicitly mentioned as one of the 'actions taken', and 'goals and activities' for 2023 when it comes to living wages. The communicated rationale is that these initiatives vision is to improve the livelihood of small-scale farmers by making them more competitive, based on sustainable practices. "As it is necessary for the sector to maintain small-scale production, it is necessary to make these farmers more competitive to ensure sustainable coffee production for the future. By increasing the farmers knowledge of sustainable operations, you contribute to better and more stable earnings, and in turn a better livelihood for the farmers and their families" (Joh. Kaffe, 2023).

Although Joh. Kaffe communicates that their collaboration in ICP is one of their main measures to address the risk of labor rights violations in Brazilian coffee production, I consider it beyond the scope of this thesis to examine this measure any further. While collaboration with other buyers is considered important to exercise leverage over suppliers when implementing HRDD, the work ICP does in terms of social and environmental issues is not directly aimed at actors in the value chain of Joh. Kaffe (Sustainability manager - Joh. Kaffe, Nov 2022). As such, I have not found it feasible, nor as relevant, to explore this

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<sup>9</sup> Coffee & Climate (C&C) is a project within ICP.

measure any further, as I see no obvious linkage between ICP and HRDD to address the risk of wage workers on Brazilian coffee farms in the value chain of Joh. Kaffe.

## 5.5 Summary

Joh. Kaffe has identified a risk of severe labor rights violations on Brazilian coffee farms in their value chain (Transparency Act inquiry, 2022). As such, the company has implemented three main measures to address this risk. The first measure is to purchase coffee from Brazilian suppliers whose policies on human rights align with Joh. Kaffe's and who contribute to the promotion of coffee farmers livelihood. Intertwined, Joh. Kaffe also finds it important to align their purchasing practices with the human rights expectations they place on their suppliers. The second measure is to only purchase coffee certified by Rainforest Alliance ('RFA'). The third measure is to collaborate with other European coffee companies in ICP on social and environmental issues in the global coffee industry. The following chapter will analyze and discuss to what extent Joh. Kaffe's HRDD benefit workers on Brazilian coffee farms, as rightsholders in risk of being subject to forced labor. Chapter 6 will focus on Joh. Kaffe's HRDD in terms of relationship with Brazilian first-tier suppliers and the purchase of RFA certified coffee as two distinct but intertwined measures implemented in the Brazilian value chain of coffee.

## Chapter 6 The effects of HRDD in Joh Kaffe's Brazilian value chain

Joh. Kaffe has identified a high risk of severe labor rights violations on Brazilian coffee farms in their value chain, and Brazil as the only geographic location where there may be forced labor (Transparency Act inquiry, 2022). This chapter addresses whether Joh. Kaffe is responding to the identified high risk of severe labor rights violations on Brazilian coffee farms in a way that contribute to the prevention and mitigation of potential and actual human rights infringements. As such, this chapter aims to explore to what extent workers on Brazilian coffee farms benefit from Joh. Kaffe's implementation of HRDD. I will argue that there is no reason to believe Joh. Kaffe's HRDD process directly or indirectly benefit wage workers in the Brazilian value chain of coffee. This holds for both RFA certification and Joh. Kaffe's relationship with their Brazilian first-tier suppliers.

The chapter is divided in four subchapters. Firstly, I explore the benefits of Joh. Kaffe's engagement with first-tier suppliers for workers on Brazilian coffee farms (6.1). Secondly, Joh. Kaffe's purchase of RFA certified coffee from Brazil (6.2). Thereafter, I address key concerns related to the potential negative effects on workers due to Joh. Kaffe's approach to HRDD, which emerged during the research process (6.3). Fourth and finally, I provide a summary where I state that there is no evidence that Joh. Kaffe's implementation of HRDD is contributing to the protection of labor rights for wage workers on Brazilian coffee farms. In fact, one might even argue that Joh. Kaffe's HRDD processes may be counterproductive (6.4). However, more transparency would be needed to verify and assess this, which will be discussed in relation to the Transparency Act in chapter 7.

### 6.1 Engagement with Brazilian suppliers

This section aims to explore to what extent Joh. Kaffe's relationship with Brazilian first-tier suppliers benefit workers on Brazilian coffee farms. As introduced in the previous chapter, I have chosen to focus on one of Joh. Kaffe's Brazilian suppliers. Namely, the coffee cooperative Cooxupé. As elaborated on in chapter 5, Joh. Kaffe believes the nature of their relationship with Brazilian first-tier suppliers is an important component of their HRDD to address the risk of labor rights violations (Transparency Act inquiry, 2022). In brief, Joh. Kaffe express their human rights expectations – such as the importance of labor rights and decent work – to their Brazilian suppliers through documents, questionnaires, and visits.

In theory, the work buying-companies – such as Joh. Kaffe - does in terms of integrating human rights expectations in their relationship with suppliers is supposed to create a trickle-down effect through the entire value chain (Smit et al., 2021). However, I will in this section argue that there is no reason to believe that the expectations regarding labor rights and decent work placed on Brazilian suppliers will trickle down to wage workers, or even the coffee farmers. I will first introduce perspectives from Brazilian farmers and representatives of Cooxupé (6.1.1), as well as from workers and their representatives (6.1.2). Combined with existing literature, the data presented in this section indicate that Joh. Kaffe’s engagement with first tier suppliers does not benefit workers on Brazilian coffee farmers and is not effective in addressing the risk of labor rights (6.1.3).

### 6.1.1 Perspectives from farmers and Cooxupé

“Cooxupé started focusing on ESG<sup>10</sup> and responsibility around 15 years ago. Our buyers were being criticized by civil society and consumers in their countries and pushed us to change our ways. In the beginning it was challenging, as old habits die hard, but with time it got easier and now it is more integrated in our practice.” (Sustainability manager - Cooxupé, Feb 2023)

As this quote from Cooxupé’s sustainability manager illustrates, Cooxupé is seemingly responding to the demands from global buyers regarding sustainability issues, such as human rights. When it comes to ESG matters, the trader consults with ESG responsible in Cooxupé. E.g., if Joh. Kaffe sends new CoC, the trader consults with ESG and checks whether the CoC from Joh. Kaffe aligns with or differ from the one Cooxupé has. If it does not, they sign, if it does, they do an evaluation where they consider their position and whether they should change their own CoC and then sign, or if they should question the buyer on their demands. This is done between the trader responsible for the communication with the company in question, and ESG manager of Cooxupé (Trader - Cooxupé, 2023). According to the sustainability manager of Cooxupé, the cooperative has the following responsibility tools: CoC, ethical guidelines, sustainability policy, a program of integrity, Gerações<sup>11</sup>, due diligence and communicate to their members what the expectations of Cooxupe are in terms of social and environmental aspects (Sustainability manager – Cooxupé, Feb 2023).

Furthermore, Cooxupé is seemingly an ideal supplier in terms of providing their cooperated members with support to implement HRDD demands. According to Joh. Kaffe,

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<sup>10</sup> Environmental, Social and Governance (ESG) issues.

<sup>11</sup> Cooxupe’s own certification scheme.

they have chosen to buy from Cooxupé due to their high quality and extensive work with their members (Sustainability manager – Joh. Kaffe, March 2023). The overall objective of Cooxupé is to guarantee the production and livelihood of the cooperated (Trader & Sustainability manager - Cooxupé, Feb 2023). The following quote from a Cooxupe-organized farmer illustrates this.

“I chose to become a member of Cooxupé in 2011 because of the security it gives (...). To store, to make it easier to sell. And why Cooxupé.. I guess because of its history as a cooperative that has provided great security to farmers such as myself” (Farmer 1 - Cooxupé, February 2023).

The small-scale coffee producer I talked to during my fieldwork, cooperated in Cooxupé, emphasized the security being cooperated provides. Especially with regards to the vulnerabilities of prices, weather and other risks which his family would otherwise have to face individually (Farmer 1 - Cooxupé, Feb 2023). Everything Cooxupé does, goes back to the producer, and Cooxupé is obliged to buy/receive the coffee of cooperated – if this is what the producer wants (Sustainability manager – Cooxupé, Feb 2023). Cooxupé is a cooperative by and for Brazilian coffee farmers and is organized to ‘gather bargaining forces on behalf of Brazilian coffee farmers against national and international buyers’ (Trader & Sustainability manager – Cooxupé, Feb 2023). According to Cooxupé, it is the coffee producing members who own the cooperative and share the profits, as well as sit with the deciding power, such as what to do with profits (Sustainability manager – Cooxupé, Feb 2023). As such, Cooxupé implements a range of measures to make sure producers have access to markets to sell their coffee, and assistance to improve their crops to get a good price (Trader - Cooxupé, Feb 2023). This responsibility is shared between the producers and employees in Cooxupé, which often are cooperated themselves (Trader & Sustainability manager - Cooxupé, Feb 2023).

To communicate with the cooperated, including on sustainability and human rights expectations, Cooxupé has many different channels. Examples are the journal (for older people), radio channel, rural panel, events, courses, technical videos two times a month on the YouTube channel and further distributed on social media, and WhatsApp – which is considered the most efficient one where all information comes, such as on coffee prices, news, events, etc (Manager of technical assistants – Cooxupé, Feb 2023). Furthermore, Cooxupé offers free technical assistance, and additional paid services for their members. There are 114 technical assistants and agronomists who assist the farmers with agrarian questions,

such as how to improve best practices on quality, sustainability, and safety. There are also always people in their physical store, where the cooperated can come at any time and ask for support (Technical Assistant 1 – Cooxupé, Feb 2023).

With an increasing global demand for certified coffee, it has become the responsibility of Cooxupé to make sure their members can meet the sustainability criteria set out by their buyers, as ensuring cooperated access to the coffee market equals meeting sustainability criteria (Trader & Sustainability manager – Cooxupé, Feb 2023). Cooxupé has all kinds of certificated coffee, such as 4C, RFA/UTZ, and C.A.F.E. In 2022, 602 of the Cooxupé members were RFA certified (Traceability manager - Cooxupé, Feb 2023). Due to the high demand for certified coffee from their buyers, Cooxupé has established their own sustainability program, called Geracoes. The aim is that the implementation of Geracoes will be a steppingstone for members of Cooxupé to become certified by CSs such as RFA (Sustainability manager - Cooxupé, Feb 2023). Consequently, there are 14 hired ‘sustainable production analysts’ who focus on assisting the cooperated in getting verified by Geracoes and thus certified in the long run (Manager of technical assistants - Cooxupé, Feb 2023).

“Cooxupé organized 400 courses for its members in 2022, this year (2023) we will have around 500. Many of these on the legislation for labor rights” (Manager of technical assistants - Cooxupé, Feb 2023).

As such, Cooxupé is communicating that they are changing their ways – environmentally and socially - due to pressure from global buyers and thus to make sure that their cooperated members will be able to access the global coffee market now and in the future. This could indicate that the integration of responsibility expectations in terms of labor rights from buying companies such as Joh. Kaffe may trickle down. However, there are two reasons why I am not convinced this is happening, or will happen, in the Brazilian context of coffee production. First, the one-way placing of responsibility demands in terms of human rights, and second, the competing pressures provided by established purchasing practices in the market. I will now elaborate on the first reason, before I elaborate on the second.

### *Demanding from, or meaningfully engaging?*

Although Cooxupé is a big company and could be considered to have capacity to do their own HRDD, Joh. Kaffe has chosen to employ an assess and address approach rather than a pass or fail approach. This is illustrated in the following quote.

“We cannot go to our suppliers and say hey, now we have a new law which demands this and that. We must collaborate and build trust with our suppliers, so that they feel comfortable sharing what they have done (in terms of HRDD) and what is challenging” (Sustainability manager – Joh. Kaffe, March 2023).

Among the challenges Joh. Kaffe has identified in sending out self-assessment form on social risks, is that they mostly receive answers that everything is going fine (e.g. on facilitation of union organization and collective negotiation opportunities), and that there are no problems. Some of their suppliers are also reluctant in sending their ethical risk evaluations. However, because of their own risk assessment, Joh. Kaffe are aware of the social challenges in the chain and is now considering how to change their questions to get more honest and comprehensive answers. Building trust is considered a key component in Joh. Kaffe’s HRDD, and they believe their close, long-term, and positive relationships with the suppliers is a great advantage to increase the likelihood of positive impacts in their value chains (Sustainability manager – Joh. Kaffe, March 2023).

Supplier-country institutions exert legal and civil society pressures for social sustainability, which shape suppliers’ attitude and receptiveness towards lead firm requests (Castaldi et al., 2023, p. 123). Consequently, companies should have a context-specific approach to their social responsibility measures in relation to what stage in the GVC it is applied, and the institutional context in which it is embedded (Lund-Thomsen, 2020; Smit et al., 2021). With suppliers lacking familiarity with the language and practicalities of HRDD, it could be considered more efficient to take a capacity-building approach and engage openly and honestly rather than monitoring compliance with CoC (Smit et al., 2021). I perceived a great difference in the familiarity with HRDD when talking to representatives from coffee companies in Norway and Brazil. As such, the approach of Joh. Kaffe could be considered the most effective way to exercise leverage at this point. However, one might argue that a more long-term solution would be to engage in capacity building at the supplier-level. Furthermore, standards and demands needs to be rooted in the local context, if not they risk losing legitimacy. As illustrated by the following quote.

“Standards are just one more demand towards the (coffee) companies and producers in Brazil. The EU place many demands on countries like Brazil to follow, but do not know the complexity of the social structure in Brazil, and how it is going to play out” (Coffee expert - Feb 2023).

Some of the interviewees in Brazil expressed that the demands being placed on Brazilian coffee suppliers and farmers is an expression of actors from the outside of Brazil trying to impose different standards and demands on Brazilian actors without being familiar with the Brazilian context (Coffee expert, Feb 2023; Trader - Cooxupé, Feb 2023). The criticism and frustration was first and foremost directed at the ‘EU’ and ‘Europe’, and CSOs and consumers – not their own buying companies - who further place these demands on the coffee companies buying coffee from Cooxupé (Coffee expert, Feb 2023; Several of the interviewees in Cooxupé and ECOM). These actors are seemingly considered the ‘bad guys’, who combines strict demands with a lack of understanding of the Brazilian context, as well as a limited understanding of contemporary challenges related to labor rights and deforestation. When discussing the possible banning of imported products related to deforestation and modern slavery a Cooxupé representative remarked that “Europe could be shooting itself in the food with these restrictions” (Interviewee in Cooxupé, Feb 2023).

Cooxupé get extremely concrete orders from their buyers when it comes to quality, taste profile, certifications, etc. (Quality manager - Cooxupé, Feb 2023). A reflection from the sustainability manager of Cooxupé was that “it is very easy to tell other people what to do”, when talking about demanding corporate responsibility in GVCs (Sustainability manager – Cooxupé, Feb 2023). The interviewee contrasted this with the way Cooxupé work with their members, where the responsibility is shared and goes both ways. The producer must show the cooperative how social, economic, and environmental demands are being met, and the cooperative has to show its members what we do for them’ (Sustainability manager – Cooxupé, Feb 2023). HRDD is more developed for downstream GVC actors – such as Joh. Kaffe - than upstream – such as Cooxupé (Smit et al., 2021). According to Joh. Kaffe, there is not much their first-tier suppliers send them without Joh. Kaffe having requested it. When asked if their suppliers demand anything from Joh. Kaffe when it comes to responsibility, Joh. Kaffe says that “the demands are one-way when it comes to human rights and other ethical issues”, and that they “do not generally receive any such demands from their suppliers” (Sustainability manager – Joh. Kaffe, March 2023).

### *Economic purchasing practices*

The second reason why responsibility-expectations from buying-companies are unlikely to trickle down is that there is no reason to believe that the economic purchasing practices of Joh. Kaffe aligns with the HRDD demands placed on Brazilian suppliers such as Cooxupé.

This is considered a key precondition for human rights expectations from buyer-companies to be fulfilled at lower levels of value chains (OECD, 2018). Besides the fact that Joh. Kaffe trades coffee on the C-market, there is no transparency on economic transactions between Joh. Kaffe and their Brazilian suppliers, and no transparency on how economic costs and benefits are distributed along the value chain from farm level to companies in Norway. Cooxupé communicates that they receive concrete demands from each of their buyers, which – if not aligned by purchasing practices – may create a down-wards pressure on the cooperative and their members when it comes to living wages and labor rights. This downwards pressure of risk and responsibility to suppliers may further be pushed down to workers on coffee farms. To combat this downward pressure, companies should integrate suppliers’ perspectives in their social responsibility strategy and measures to address the risk of responsibility measure to merely result in a reinforcement of highly unequal distributions of trading relations (Lund-Thomsen, 2020).

In addition to the top-down approach of sustainability demands in general, the lack of economic capacity emerged as a key challenge to ensure living wages and decent work for Brazilian coffee farmers (Farmer 1, Sustainability manager, Technical Assistant 1 & Trader – Cooxupé, Feb 2023). It was argued that, meeting sustainability demands, whether environmental or social, generate a cost for the producer, which the buyer placing the demands needs to integrate in the price they pay for the product (Farmer 1 - Cooxupé, Feb 2023). As is also the case with their other suppliers, Joh. Kaffe does not trade directly with Cooxupé, but at the C-market (Sustainability manager – Joh. Kaffe, Nov 2022). This decouples the financial relationship from the human rights-expectations relationship, which undermines the latter. This notion is nicely illustrated in the following quotes.

“If the money does not exist, there is no way to act responsible – socially or environmentally” (Sustainability manager - Cooxupé, Feb 2023)

“As a producer, I want to sell my product for the best price I can get and have the greatest profit I can have. And on the other side, the company that is going to buy, wants to buy for the lowest price it can, for it to win as well. So, we should meet in the middle, right?” (Farmer 1 - Cooxupé, Feb 2023).

Respecting human rights is a costly business (Deva, 2020), and some suppliers may have economic difficulty in implementing the necessary changes to address potential and

actual adverse human rights impacts as required by buyers placing these demands through HRDD (Smit et al., 2021). As presented in the background section on the GVC of coffee, benefits, risks and costs are not equally distributed, in favor of international trading companies and coffee roasters in importing countries, at the expense of small-scale coffee farmers. Integration of responsibility demands, such as the sending and signing of CoC, must be complemented by purchasing practices to be effective (Smit et al., 2021). According to ADERE-MG, coffee importing companies – such as Joh. Kaffe – outsources their social responsibility to Brazilian coffee producers without the producer being paid sufficiently to meet the requirements such as labor rights and living wages (ADERE-MG 1, Feb 2023).

According to Joh. Kaffe, their purchasing practices are responsible (Joh. Kaffe, 2023). However, there is no transparency on economic transactions between Joh. Kaffe and their suppliers. As such, it is impossible to say something about the extent to which Joh. Kaffe’s purchasing practices align with the sustainability demands – such as labor rights and living wages – they place on their suppliers. What is known, is that Joh. Kaffe purchases all coffee commercially, which means they purchase it on the C-market (Joh. Kaffe, 2023).

### 6.1.2 Perspectives from workers and their representatives

“Remember that the employee has a different perspective than the employer” (ADERE-MG 2, Feb 2023)

As one of the representatives of ADERE-MG points out, workers on Brazilian coffee farms, and the farm owners are not the same, nor do they have the same interests. This statement highlights the inherent difference in perspectives between employees and employers in the coffee industry. Considering this disparity, representatives from ADERE-MG argues that Cooxupé cannot be trusted when it comes to their communicated aims to ensure decent working conditions on the farms they cooperate with (ADERE-MG 1, Feb 2023). This mistrust is amplified by Cooxupé association with global buyer-companies such as Joh. Kaffe and the commercial practices prevalent in the coffee industry. In the following pages I will elaborate how engagement with suppliers is unlikely to benefit Brazilian farm-workers, with interviews from coffee-farmers in Brazil.

‘You will not solve our problems by saying that you have zero tolerance for slave labor in the value chain of coffee. It is a step, sure, but it is a baby step. What really matters is to

implement [zero tolerance for slave labor] in your purchasing practices’ (ADERE-MG 1, 2023)

Cooxupé is a cooperative by and for Brazilian coffee farmers. This means that they are representing the employers – the coffee producers - of the workers who are at risk for working under indecent working conditions such as forced labor in Brazil. In 2021, it was found that nineteen workers on a coffee farm had their wages cut by nearly a third, to cover costs related to equipment to do their job. This is illegal under Brazilian law. The farm was certified by RFA/UTZ, belonged to the family of the president of Cooxupé and received wide attention as well as pressure on global coffee-buyers possibly linked to the farm through Cooxupé (Camargos et al., 2021). According to Joh. Kaffe, this incident is the last they have identified as a violation of labor rights by members of Cooxupé. The farm was suspended from their RFA license, the workers were compensated, and the case solved as interpreted by Joh. Kaffe (Transparency Act inquiry, 2022).

A representative from ADERE-MG sees this rather differently, as the following quote exemplifies.

‘The worldwide credibility of Cooxupé is not based on their work with labor rights. Cooxupé is one of the great villains in Brazilian coffee production, and violators of the human rights of rural enslaved. Is it limited to Cooxupé? No. But as Cooxupé is one of the main actors within Brazilian coffee production, the cooperative is also representing labor rights violations in rural areas, and especially in coffee production’ (ADERE-MG 1, Feb 2023).

I have not been able to identify research indicating that there is a causal relationship, or even correlation, between the welfare of a farm owner and the labor rights and wages of the workers hired on a specific farm. Intuitively, it is necessary for the farm owners to have a minimum of economic and social conditions to ensure the labor rights and living wages of their workers. As such, the economic and social interests of coffee producers and their hired labor may align to a certain extent. However, it should not be taken for granted that improving the livelihood of Brazilian coffee farmers equals improving the situation for wage workers on these coffee farms.

First and foremost, from conversations with Brazilian actors within and with knowledge of the coffee industry in the country, it is standard to pay coffee workers a minimum wage. According to the 2022 Living Wage Update Report from Minas Gerais

South/Southwestern region in Brazil the living wage per month in BRL 2,522 (USD 480). Cost of decent standard of living for a family is BRL 3,751 (USD 714). Minimum wage in Brazil per April 2023 is BRL 1,302 (USD 244) (Oxfam Brazil, 2021). Even though workers may be paid a minimum wage, the living wage required is calculated to be significantly higher, resulting in a large wage gap (ibid.), which further shed light on the economic inequalities and vulnerabilities of workers in the region. One of the coffee workers interviewed argued that even though he thought his employer is rich, he still only gets paid the minimum wage (Worker 2, Feb 2023). He elaborates that: “The companies should demand from the producer that they pay a higher salary to their workers. The workers suffer from rain, sun. The farm owner where I work is very rich. But he does not give me any gloves, or a raincoat. Nothing. I must make sure I have everything I need” (Worker 2, Feb 2023).

When the Brazilian CSO ADERE-MG participates in unannounced audits on Brazilian farms to “identify and rescue” people subject to indecent working conditions, they state that there are some of the workers who do not want to go with them (ADERE-MG 3, 2023). “They receive some money and then they ask if they can give it back to the boss and go back to work. They think we are the bad ones, because we are taking their job away from them” (ADERE-MG 3, Feb 2023). According to one of the interviewed coffee workers, the workers are afraid that if they must leave the coffee farm, they will not be able to get another job (Worker 1, Feb 2023). Workers under forced labor may not be aware of their rights, lack the ability to complain about human rights infringements, or the will to address the issue due to their dependency on such exploitative jobs (Deva, 2023).

“Some have the choice to say no to being enslaved, others do not” (Trade Union 1, 2023).

Many workers travel to the South of Minas Gerais during the coffee harvest (Oxfam Brazil, 2021). According to one of the corporate representatives from Cooxupé, “they come here voluntary to get a good salary”, and the fact that many of them are unregistered is “not necessarily problematic as long as they receive the minimum wage” (Manager of technical assistants - Cooxupé, Feb 2023). One of the interviewees is originally from the North of Minas Gerais but came to the south to harvest coffee when he was a child. Years after, he recognized he had been a victim of slave labor and child labor three times in his life (ADERE-MG 1, Feb 2023). According to the interviewee “there was no choice. Either you would work, or you would be hungry. Or, either way you were hungry. Up there, in the north,

my family did not have any options, you would not say no to that kind of work, not even as a child” (ADERE-MG 1, Feb 2023).

The high competition and chase for profits characterizing Brazilian agriculture in general in combination with the impunity for landowners make the benefits for landowners of keeping forced labor outweighing the risks of being caught and punished (Patton, 2014). Brazilian competitiveness on the global market of coffee has been found to be primarily due to the low production costs of labor, land and water (Caldarelli et al., 2019). While slavery was formally abolished in Brazil in 1888, the structural conditions ensuring cheap labor are still very much present in the country (Fernandes, 2017), and cases of modern slavery occur and have been documented systematically since the 1970s as pattern of exploitation which makes for more efficient competition on the global market (Issa, 2017).

“The law is supposed to be for everyone, but unfortunately, who dominates is the fazendeiro (farm owner)...” (Worker 2, Feb 2023).

“First, the Brazilian state is an estado escravagista (slave state). It is no use calling it anything else. Those dominating were the farmers, and they still dominate. From their perspective, the black and the indigenous population is still their slaves. So, we live in a slave state” (Trade Union 2, Feb 2023).

In Brazil, employers have a duty of care towards their workers, and are to be held accountable if workers are found working under conditions analogue to slavery (Pinheiro et al., 2019), where the Article 149 of the Penal Code provides for imprisonment of two to eight years and a fine (Moura, 2023). However, weaknesses in the Brazilian criminal justice system result in impunity for landowners, making existing legislations inefficient in their purpose of combatting forced labor (Patton, 2014). This is reinforced by the insufficient resources allocated to the labor inspectorate (Pinheiro et al., 2019), and the 2017 labor reform which further deregulated the labor market and weakened the bargaining power of workers, exacerbating the risk of exploitation (Carbonai, 2019).

### 6.1.3 Evidence from the literature

How do these findings correspond to the existing literature in this field? CoC has been found to have uneven impacts on labor rights, where freedom of association and discrimination are very seldom able to be identified by the use of CoC and audits to monitor, and auditing is thus

more fundamentally flawed than assumed in previous research (Egels-Zandén & Lindholm, 2015). CoC plays a role to improve labor standard, but does not challenge the “commercial practices or embedded social relations” that create the conditions for poor labor standards in GVCs (Barrientos & Smith, 2007, p. 713). Suppliers are usually expected to pay for CoC requirements such as audits and human rights training, and frequently accept orders below production costs (lead times, prices and technical specifications) (Smit et al., 2021), squeezing profit margins which are already low. Lund-Thomsen (2020) caution against the Eurocentric domination of corporate responsibility conceptions where the corporate responsibility for human rights is often defined and advocated by actors in the Global North in ways that ignore the unique challenges and circumstances faced by suppliers and countries in the Global South (Lund-Thomsen, 2020).

mHRDD laws have only been implemented in European countries thus far, and Deva et al. (2023) warn against the colonial drafting of such laws, especially since there has been identified a lack of participation of actors from the Global South (Deva et al., 2023). Irresponsible sourcing practices have been listed as one of the root causes of forced labor in GVCs (LeBaron, 2021). Buyer companies’ purchasing practices often contradict their own HRDD requirements, making them unable to pay living wages, or even minimum wages (Smit et al., 2021). Low and volatile prices on the C-market squeeze profit margins of coffee producers – which are already low, and labor is generally the largest expense of coffee farms and may account for as much as 60 per cent of production costs (Panhuysen & de Vries, 2023).

#### 6.1.4 Summary

The nature of their relationship with Brazilian first-tier suppliers is communicated as one of the key measures through which Joh. Kaffe address the risk of labor rights violations on Brazilian coffee farms. However, as we have seen over the last pages, there is little reason to believe that this benefits wage workers on Brazilian coffee-farms.

#### 6.2 Rainforest Alliance and labor rights in Brazil

In this section, I explore to what extent Joh. Kaffe’s purchase of RFA certified coffee benefit workers on Brazilian coffee farms. Firstly, I briefly repeat the rationale behind Joh. Kaffe’s purchase of RFA certified coffee to address the risk of labor rights violations on Brazilian coffee farms (6.2.1). Thereafter, I introduce perspectives from Brazilian farmers and Joh. Kaffe’s Brazilian supplier Cooxupé (6.2.2), workers and their representatives (6.2.3), and

existing literature and contextual factors from the Brazilian coffee chain which indicates that there is little reason to believe that RFA certification benefit workers on Brazilian coffee farms (6.2.4).

### 6.2.1 The purpose of RFA to address labor rights violations

Joh. Kaffe has chosen to only purchase coffee from Brazil which is certified by RFA (Transparency Act inquiry, 2022). The communicated rationale for why this is supposed to address the risk of labor rights violations on coffee farms were elaborated on in chapter 5 but will briefly be repeated here. Firstly, RFA ensures that each certified farm is audited on an annual basis by an independent organ to make sure the farms are meeting the criteria for being certified, such as ensuring decent working conditions for their employees. Secondly, RFA inform and support certified farmers on how to implement labor management systems where workers' rights are respected. Thirdly, RFA participates in political processes in Brazil to promote decent work, and finally, RFA certified farmers receive a premium for their sold products. This make farmers able to pay timely and decent wages to workers (Joh. Kaffe, 2023; RFA, 2022). In the rest of this subchapter, I will challenge these assumptions and argue that there is no reason to believe RFA certification benefit workers on Brazilian coffee farms, and not even certified coffee farmers.

### 6.2.2 Perspectives from farmers and Cooxupé

All Brazilian suppliers of Joh. Kaffe must be able to supply Joh. Kaffe with RFA certified coffee. As such, it is the first-tier suppliers of Joh. Kaffe who are faced with the demand of RFA certified coffee, and further place this demand on their suppliers. This section aims to present the perspectives of these first-tier suppliers.

Existing research on VSS – which RFA is an expression of - in the coffee industry is not able to draw any conclusions on the actual effects of VSS on the social and economic conditions of coffee producers (Barreto Peixoto et al., 2023). In general, effects of CS on agricultural producers are found to be highly context dependent and depends on factors such as product and organization of a particular chain, as well as the specific CS and geographic region. As I have not been able to identify research on the effects of RFA certification on Brazilian coffee farmers specifically, it becomes far beyond the scope of this thesis to state actual effects of RFA on Brazilian coffee producers. However, several concerns regarding the potential effects of RFA certification on Brazilian coffee farmers emerged during the research process, which I will now explain in more detail.

Firstly, RFA is perceived as a strict – even unfair – type of CS. Among the corporate interviewees of coffee companies in Brazil and Norway, as well as two of the coffee farmers, a shared perspective was that RFA is the hardest certification to obtain (Sustainability manager - ECOM, Feb 2023; Sustainability manager – Joh. Kaffe, March 2023; Farmer 3 - ECOM, 2023; Farmer 2 – Cooxupè, Feb 2023). This ‘strictness’ has been critiqued by Brazilian coffee farmers – cooperated and non-cooperated in Cooxupè, to make the costs of being RFA certified higher than the benefits for coffee farmers (Technical Assistant 2 & Traceability manager – Cooxupè, Feb 2023). RFA has been criticized because it lacks a minimum price guarantee, which leaves farmers vulnerable to market price variations, which RFA has addressed in their 2020 standard where buyers are required to pay a mandatory additional cash payment to certified farms over and above the market price (Bozzola et al., 2021). It is uncertain how this has played out in practice.

“RFA is strict. So strict that they are having difficulties getting farmers certified” (Sustainability manager – Joh. Kaffe, March 2023).

“All of the certifications align, but RFA is the strictest one. Many have left RFA the last years” (Sustainability manager - ECOM, Feb 2023).

However, despite many of their members being discontent with the RFA demands, the number of cooperated RFA certified in Cooxupè has not decreased significantly since the merger between RFA and UTZ, which was considered the reasons for the discontent. “In 2022, 602 of the Cooxupé members were RFA certified. In 2021, there were 693, and in 2020 there were 614” (Traceability manager – Cooxupé, Feb 2023). According to the e-mail correspondence with RFA Brazil, there were “436 RFA certified coffee farms in Brazil, and 539 RFA certified farms in total” in March 2023 (E-mail correspondence with RFA Brazil, 6 March 2023)<sup>12</sup>. There is a great overlap between RFA certified farmers and members of Cooxupè, which makes sense given its size in Brazilian coffee industry. This would indicate that there are some benefits of being RFA certified for Brazilian coffee farmers, which lead me to the next finding.

“It is worth it to be certified if you pay less than you gain.” (Farmer 3 - ECOM, Feb 2023).

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<sup>12</sup> These numbers obviously do not add up. The reasons for this are unclear, however, at RFA latest report, they report that they have 1863 “certified producers” in Brazil (Rainforrest Alliance, 2023). As such, the mismatch seems to be due to inconsistencies in how farmers/producers are counted and communicated to the public.

“Certification pushes us to get better organized, and when we first get certified we receive a lot of support and assistance in improving our practices. Without certification the farm would not be as well-managed.” (Farmer 2 - Cooxupé, Feb 2023).

Secondly, potential benefits of RFA certifications. One of the cooperated farmers visited during fieldwork in Minas Gerais, used to be UTZ certified, but did not manage to re-certify after the merger of UTZ and RFA. Despite the investment in getting RFA certified is big, the farmer believes it is worth it and will try to get certified again in May 2023 (Farmer 2 - Cooxupé, Feb 2023). For coffee producers, the adoption of VSS, despite the costs involved, can lead to higher prices, strengthen organizational capacity, improved quality, and quantity of production, ensure greater access to markets and reduce livelihood vulnerability (Almeida & Spers, 2019; Barreto Peixoto et al., 2023; DeFries et al., 2017). However, existing research has also found that, irrespective of their certification status, most coffee farmers are unable to break even (Dietz et al., 2020). The prices of certified coffee and the premium prices paid to farmers for that coffee have been dropping as the amount of certified coffee increases, creating a risk that the demand for CS can become merely a requirement to access markets, and that does not bring economic benefits to producers (Barreto Peixoto et al., 2023). The efficiency of CS to improve coffee producers’ livelihood is highly context-dependent, also on the type of CS. In a case study of RFA effects in Rwanda, there was not found any significant association between certification and socio-economic indicators (Gather & Wollni, 2022). Research is needed to state actual benefits, as said.

“Certification is elitist, it does not include the small-scale producer” (Several of interviewees in Cooxupé and ECOM, Feb 2023).

Brazilian smallholders face difficulties accessing the financial resources to obtain certification (Maguire-Rajpaul et al., 2020). The same farmer who above stated that the RFA certification was worth it and had been essential for the management of the farm, added that “our family farm is big. Small-scale farmers take a much higher economic risk, as there is no guarantee you will get certified” (Farmer 2 - Cooxupé, Feb 2023). In terms of number of coffee farms in Brazil, most are characterized as mini and small (Caldarelli et al., 2019), estimated that 85 per cent of farmers holding and cultivating less than 50 ha (Maguire-Rajpaul et al., 2020, p. 4). However, in terms of volume, the largest coffee producers are non-family establishments, also known as agribusinesses, where it is estimated that 70.9 per cent of all coffee is produced in Brazil (Oxfam Brazil, 2021). Large agribusinesses located on Brazilian

estates constitute less than 1 per cent of all coffee farms globally but produce roughly 10 per cent of the world's supply (Morris, 2019, p. 13).

In general, VSS requirements are considered “complex and burdensome to implement, especially for small producers” (Partiti, 2022, p. 120). The management requirements become disproportionately burdensome for smaller producers in comparison with larger (Maguire-Rajpaul et al., 2020), and the poorest and most marginalized coffee farmers are hardly able to obtain certification without external support (Barreto Peixoto et al., 2023). According to Barreto Peixoto et al. (2023), the UTZ certification – now merged with RFA – is the most popular among large scale coffee producers, such as Brazilian. In a report from 2015, UTZ wrote that “to date, UTZ certification in Brazil has mainly been adopted by medium (20-100 ha) and large-scale (more than 100 ha) producers. Together, they represent more than 98% of the UTZ certificate holders in Brazil. Small-scale producers (below 20 ha) are underrepresented, although there are efforts to include them in the certification program” (UTZ, 2015, p. 6). As an attempt to address the concern that only large-scale producers are certified, RFA has implemented the option to certify in groups to “increase smallholder participation through economies of scale”, which has – at least partially – fulfilled its goal of increasing smallholder access to certification (Maguire-Rajpaul et al., 2020, p. 4).

There is no overview of the size of RFA certified farms in Brazil (see RFA websites), nor were this question responded to in my e-mail correspondence with RFA in March 2023. According to Cooxupé, it is mostly their medium and big farms who are RFA certified. As there is an overlap between the RFA certified coffee producers in Brazil and members of Cooxupé, this could indicate that the RFA certification is mostly held by relatively large coffee producers in Brazil, and that small farmers are excluded. Potentially leading to further concentration of large estates in Brazil while small scale farmers are being squeezed out of the coffee market. Brazil is a highly unequal society, where land, income and political power<sup>13</sup> are concentrated in a few hands (Zimmerman et al., 2022). The agricultural exporting elite has a historically and contemporary powerful position in Brazilian society (Fernandes, 2017), and 45 per cent of all productive land is owned by 1 per cent of the population (Instituto de Desenvolvimento Agrário de Ceará, 2020).

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<sup>13</sup> The group of parliamentarians who defend the interests of large landowners and agro-industries is known as the ‘Ruralist Block’ (Zimmerman et al., 2022, p. 125).

Thirdly, coffee cooperatives play an important role for farmers to meet the sustainability demands set out in different VSS. In fact, it is quite challenging to disentangle the positive effects of CS from the positive effects of being cooperated, as certified farmers are typically organized in cooperatives (Sellare et al., 2020). As such, cooperative and certification effects are highly linked, e.g. the effects of CS on poverty reduction in the coffee industry strongly depend on the performance and organization of coffee cooperatives (Barreto Peixoto et al., 2023). This is also the case in Brazilian coffee production, where cooperatives are key to train their producing members on how to meet VSS requirements, a transfer of knowledge which is essential for the farmers to meet buyer sustainability demands (Almeida & Spers, 2019).

The relationship between cooperative and VSS effects is relevant also for Joh. Kaffe's HRDD, who communicates that they aim to purchase coffee from suppliers contributing with positive measures for coffee farmers – such as cooperatives. According to Joh. Kaffe, the work their suppliers do to help farmers reach certification criteria by having agronomists out on the farms is also an important component and complement the certification process (Sustainability manager – Joh. Kaffe, March 2023). According to Cooxupé, there is a nearly 100 per cent overlap between their members who are RFA certified and the total number of RFA certified farmers in Brazil (Traceability manager – Cooxupé, Feb 2023). With their 18 000 members, Cooxupé is the biggest coffee cooperative in Brazil, and “everyone has to go to Cooxupé occasionally to get coffee” (Trader - Joh. Kaffe, Jan 2023). This may indicate that Cooxupé has a relatively strong position in the world market of coffee, potentially benefitting the cooperated with access to markets, positive for living wages and livelihood. This makes it important to distinguish between potential positive and negative effects as a result of cooperative vs RFA.

“Europeans have the highest demand for certified coffee” (Sustainability manager – Cooxupé, Feb 2023)

“We have been pushing on our suppliers that we will be needing certified coffee, more and more in the future, and that we still want to buy from the company – please help your farmers to become certified” (Sustainability manager – Joh. Kaffe, March 2023).

“I am so sick of Rainforest Alliance” (Interviewee in coffee company, Feb 2023)

A prerequisite for Joh. Kaffe engaging with suppliers in Brazil is that the supplier must be able to provide coffee that is RFA certified. CS, such as RFA, are designed in and led from Northern economies (Barreto Peixoto et al., 2023, p. 304). As of now, it is unclear how VSS – such as RFA - change power dynamics related to human rights (Bennett, 2022). “Where requested by lead retailers, VSS can become a de facto necessary condition not just to enter their value chain, but also to market in Western countries” (Partiti, 2022, p. 120). It is not well understood to what extent benefits and incentives of different VSS are transmitted to producing countries (Minten et al., 2019). The usurpation of governance responsibilities by actors from the North is a serious obstacle to long-term contributions of CS to sustainable development goals (DeFries et al., 2017, p. 10). There is also research claiming that the existence and use of VSS reinforce and exacerbate the problems they claim to solve, merely providing companies with a social legitimization tool to continue business as usual at the expense of human rights (Ponte, 2019).

There is mounting evidence that VSS schemes and measures are ineffective to prevent and address labor rights violations in GVCs (LeBaron et al., 2022). The critique directed at certifications does not seem to have passed Joh. Kaffe by. Norgesgruppen and Joh. Kaffe acknowledge that the use of certifications is only one of many tools needed to address indecent working conditions in their value chain but do believe that certifications in combination with supplier engagement and dialogue with relevant stakeholders, is useful (Transparency Act inquiry, 2022).

### 6.2.3 Workers perspectives on RFA

“Certification is not a guarantee for workers’ rights! And they (the European companies) know this, I am sure they know this” (ADERE-MG 1, Feb 2023)

“Certification alone cannot guarantee workers’ rights, but we believe certifications within the coffee sector is a good tool” (Transparency Act inquiry, 2022).

This section aims to explore potential effects of RFA certified coffee on wage workers on Brazilian coffee farms. As for effects on wage workers, the knowledge gap is even bigger, as most research on CS effects have been focusing on coffee producers, not hired labor (Barreto Peixoto et al., 2023). I have not been able to identify any research on the effects of RFA certification on the labor rights, living wages and working conditions on Brazilian coffee producers and wage workers. Given the context-dependent nature of VSS efficiency, it is

therefore impossible – and beyond the scope of this thesis, to state the effects of RFA certification on farm level in Brazil, and thus whether this address the risk of labor rights violations and lack of living wages on Brazilian coffee farms.

The aim of this section is to discuss two key challenges of RFA certification to benefit wage workers in Brazil, which emerged during the research process. First, the problematic aspects of social audits to obtain certification. Second, the lack of meaningful engagement with workers and their representatives prior to, during, and after certification is obtained, which together creates a risk that the purchase of RFA certified coffee merely creates an illusion and false sense of security regarding labor rights, rather than constituting a positive contribution for wage workers.

### *The social audit in a Brazilian context of labor rights*

To get RFA certified, the farm, farmer groups or supply chain organizations must undergo an annual physical inspection – a social audit – of the farm, where the actor is evaluated based on the Rainforest Alliance 2020 Sustainable Agriculture Standard by an independent, authorized organ. The RFA certification must be renewed every third year (E-mail correspondence with RFA Brazil, March 2023). As such, social auditing is a key process for coffee farms to achieve the certificate.

‘Let me tell you, I have already worked on certified farms. When the auditors go there (..) everything gets organized. The farm gets a telephone saying the inspectors are coming, and those who are not registered are told to hide, and then the day that the inspectors come everything is in order’ (Worker 2 - Feb 2023).

The social audits undertaken by different CS – including RFA – was considered a joke amongst the workers, CSO and trade union representatives who I interviewed in Brazil. First and foremost because they are announced in advance. “The warning is bad. Where I live, they hide the trash, they hide the workers. And get a certification” (Worker 1, Feb 2023). This announcement makes it possible for the farm management to ‘clean up’ the farm for the audit. According to one of the representatives from ADERE-MG, there is a term – a code word - used when state inspectors arrive to look for workers in precarious situations, which is ‘hide the chickens’. “Because when it rains, we collect the chickens of the farm and hide them, so it doesn't rain on them. (...) So, hide the chickens means to hide the workers so they don't get caught” (ADERE-MG 3, Feb 2023).

These dynamics have also been identified in other, comparable GVCs. Among the reasons why CS are failing to detect, address, and prevent forced labor in the tea supply chain, are (1) Audit fraud and deception is rampant, and problems frequently hidden, and weak and limited verification systems, creating a permissive environment for violation of labor rights (LeBaron, 2021, p. 34). RFA has been critiqued for their light auditing practices, which they are supposed to have addressed in their new 2020 standard (Bozzola et al., 2021).

Social auditing is found to be inefficient to detect, report and correct adverse human rights impacts in GVCs (McCorquodale et al., 2017; Nolan, 2022; Smit et al., 2021). Working conditions are rather difficult to classify and verify through numbers (Lebaron & Lister, 2015), and social auditing is argued to merely obtain superficial snapshots of actual working conditions, partly due to the limited engagement with workers (Nolan, 2022), and there is a need for improved approaches to auditing and auditor training for VSS to tackle human rights issues (Bennett, 2022). Consequently, all interviewed workers and CSO representatives argued that for the auditing to have any real value to detect and prevent indecent working conditions, the auditors must come unwarranted and with workers representatives. Furthermore, the seemingly lack of meaningful engagement between RFA, wage workers and their representatives indicate that it may not constitute a positive contribution for wage workers on Brazilian coffee farms, which I will now explore in more detail.

#### *Lack of meaningful engagement with workers and their representatives*

Rightsholders – such as wage workers – are not sufficiently included in the governance process of different VSS (Bennett, 2022). According to interviewees from Brazilian trade unions, CSOs and workers, certificatory organizations such as RFA do not engage with workers or their representatives and is thus not informed by their realities and perspectives. This is partly why they question the use of RFA certification as a tool to address labor rights violations on Brazilian coffee farms (ADERE-MG 3, Feb 2023). While working conditions are a core topic for certifications and corporate policies on responsible sourcing in the coffee industry, the rural workers and their representation – rural unions – are often excluded from the governance processes under those instruments in Brazil (Oxfam Brazil, 2021).

“For certifiers to act responsible, they must listen to the workers, and be informed by the trade unions. Have the union going with the certifiers (during their audits), so that the certifier is

not only informed by the farm owner, but the perspective of the worker as well. Have real representation of the worker” (ADERE-MG 3, Feb 2023)

“The biggest certifiers in Brazil, they talk to the farmer. They do not talk to the worker. And the union does not participate in anything either. If the certifiers were to talk to the unions and the workers, then they would maybe have some grasp of reality, but they do not. They only talk to the farmer, who will say whatever benefits him the most” (Trade Union 2, Feb 2023).

According to RFA, they are working towards raising workers awareness about their labor rights, supporting the realization of those rights, as well as access to education, physical and mental health services, and financial services so they are less vulnerable to exploitation (RFA, 2022). As it did not become quite clear to me in the published documents by RFA, I asked RFA Brazil – over e-mail - how they work with labor rights to ensure these are respected on certified farms, and whether trade unions and wage workers inform RFA work on social issues, or if they only engage with the producer (E-mail correspondence with RFA Brazil, March 2023). In their response, RFA emphasized that their primary role is to disseminate information regarding how their social requirements are to be met, as described in detail in their *General guide: For the implementation of the Rainforest Alliance Sustainable Agriculture Standard 2023* (ibid.). This information is disseminated to the independent auditing companies conducting the social audits for farms to obtain RFA certification, as well as certificate holders, and include information about trade union expectations and the complaint mechanism RFA has established for actors along the coffee chain to use (ibid.).

The implementation of complaint mechanisms available to workers is essential for social auditing to hold the potential to prevent and mitigate labor rights violations (Ford & Nolan, 2020). Although it is uncertain to what extent workers on RFA certified farms are familiar with and use this mechanism, and to what extent they are actually aware of the different certifications on the farm they are working, this could be considered a step in the right direction. However, there is a call for more transparency regarding the obtained audit information, for workers, policy makers and companies to understand the process behind the audit, as well as assess its veracity, utility, and suggest follow-up (ibid.).

It remains unclear to what extent trade unions and workers are part of the certification process. However, if it is the case that trade unions are not informing or participating in the work of RFA, social auditing in the case of RFA and workers on Brazilian coffee farm could

be considered more a tool for companies to preserve and legitimize existing business models which favor corporate interests rather than addressing transformations needed to prevent and cease violations of labor rights (Nolan & Frishling, 2020). In theory, the work RFA do to certify coffee farms is supposed to provide Joh. Kaffe and other coffee importers with some security regarding social and environmental issues (Joh. Kaffe). In reality, however, VSS and CS are more likely to be a pleasant illusion, obscuring the extent of indecent work.

#### 6.2.4 VSS in the Brazilian coffee industry

Despite the coffee industry being an early adopter and at the forefront of the creation and implementation of VSS since its emergence in the 1960s (Bozzola et al., 2021; Samper & Quiñones-Ruiz, 2017), the widespread use of VSS has not translated into documented positive changes on the ground, and is consequently being questioned on all fronts (Grabs, 2020). Despite Brazil being recognized for its commitment to private sustainability initiatives such as RFA (Moda et al., 2022), and is the world's primary supplier of certified coffee beans (Maguire-Rajpaul et al., 2020), there is a gap between corporate and farm owners' commitment to CS, and implementation of criteria in practice (Guimarães et al., 2022).

Workers are frequently found in conditions analogue to slavery in Brazil, also on certified farms, including coffee farms which are certified by RFA<sup>14</sup>. Regarding VSS and labor rights, existing research has identified “consistent shortcomings” with respect to wages, and “consistent evidence of ineffectiveness” with respect to some metrics, such as freedom of association (LeBaron & Lister, 2022, p. 681). In a study of labor practices on certified and non-certified tea plantations, ethical certifications have been found to ‘definitely not’ lead to worksites free from forced labor and exploitation (LeBaron, 2021). VSS have been found to be less effective—especially with regard to collective rights and freedom of association—in labor repressive regimes (Anner, 2017; Bennett, 2022). Although labor legislation in Brazil is considered one of the most rigorous among coffee-producing countries, Brazilian coffee is one of the most demanding global productions in terms of social issues (Brazilian Coffee Industry Association, 2021). According to ITUC, Brazil is one of the worst countries in the world to be a worker. The Labor Reform of 2017 is part of a trend to deepen the insecurity

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<sup>14</sup> In July 2022, 7 workers were “rescued” at a coffee farm in Minas Gerais (BR), after years of living and working under “conditions analogue to slavery” as defined by Brazilian law. The farm was part of a group of RFA certified farms and had over 10 different certifications. In 2021, it was found that nineteen workers on a coffee farm had their wages cut by nearly a third, to cover costs related to equipment to do their job, illegal under Brazilian law. The farm was certified by RFA/UTZ (Business & Human Rights Center, 2021).

and vulnerability of workers in Brazil (Colombi & Krein, 2020). Since its adoption, the entire collective bargaining system has collapsed in Brazil, with a drastic decline of 45 per cent in the number of collective agreements concluded' (ITUC, 2022). It was also predicted that inequality in terms of income and bargaining power in the labor market would increase, where sectors in which unions find it more difficult to organize their base, such as sectors characterized by high levels of informality will be on the losing end (Carvalho, 2017). While high levels of informality, it is not known how the labor reform has played out in the Brazilian coffee industry specifically.

### 6.2.5 Summary

The price premium coffee farmers are to receive for selling certified coffee goes to the farm owner. The effects on workers' rights are unknown, but labor does constitute a big cost, and in Brazil there is a high prevalence of informal work and salaries potentially under the minimum wage. Independent of the profile of RFA certified farmers, coffee farmers are under enormous pressure to capture market shares and survive on the international coffee market, where VSS is becoming a precondition to sell coffee to big markets such as the European. As for wage workers, the use of social auditing and lack of meaningful engagement with workers and their representatives constitute a challenge in a Brazilian context where severe forms of labor rights violations in the coffee industry are systematic and labor rights in general are being weakened.

### 6.3 Could HRDD even make matters worse?

While the previous two sections argued that the HRDD of Joh. Kaffe is not likely to benefit workers' rights in their Brazilian value chain, this section takes the argument a step further, and considers whether HRDD practices might even have a negative impact on workers' rights. Specifically, HRDD processes may create a downward pressure where the costs of sustainability ultimately are paid by the workers.

“(..) Who practices labor crime, slave violation of the initial right, it is the producer - who should ask for more benefits from the company he sells to. The company outsources their responsibility to the producer, even though the producer gets paid nothing – and then of course he will not guarantee the best working conditions for his farm workers. We must look at the actors at the top of the chain” (ADERE-MG 1, Feb 2023).

Several reasons for the social challenges at the producing end of the coffee chain has been identified. First, it is estimated that around 80% of coffee producers globally are small-scale producers (Morris, 2019), of which many face a commodity price of coffee negatively affecting their profitability (Panhuysen & de Vries, 2023). When produced by smallholders, agricultural commodities rarely lead to a sustained improvement in livelihood conditions, and producers are often trapped in a vicious cycle of low prices, low productivity, and inadequate access to the resources needed to address these challenges (Grabs & Carodenuto, 2021). While fragmented at producer level, the coffee industry is characterized by concentrated market power amongst trading and roasting companies, and the social marginalization small-scale coffee farmers face today is linked to uneven distribution of value, risk, and power in the chain (Panhuysen & de Vries, 2023; Ponte, 2019a; Samper & Quiñones-Ruiz, 2017).

Most of the ca. USD 200 billion value that coffee generates globally accrues to brands, retailers, and supply chain operators (Samper & Quiñones-Ruiz, 2017), and roasters and retailers in importing countries capture the largest share of value in the chain (Ponte, 2019). The increase in economic value generated in an expanding global coffee industry is not reflected in producing countries, as most of the value remains in the countries importing coffee (Utrilla-Catalan et al., 2022). The underlying power inequities between Northern buyers and Southern producers have remained fundamentally unaltered over the last decades (Grabs & Ponte, 2019). As such, inequalities in the coffee GVC continue to increase (Utrilla-Catalan et al., 2022). The growing economic inequality and social marginalization of small-scale farmers are further aggravated by the impacts of climate change and environmental issues such as the destruction of biodiversity (Panhuysen & de Vries, 2023). As such, most of the economic, social, and environmental risk is borne by coffee producers (Samper & Quiñones-Ruiz, 2017). Labor is generally the largest expense on a coffee farm and may account for as much as 60% of the total cost of production. Production is characterized by a rural and seasonal nature, several health risks, and a labor market with high levels of informality (Panhuysen & de Vries, 2023).

It is not well understood to what extent benefits and incentives of different VSS in the coffee industry are transmitted to producing countries (Minten et al., 2019). However, it seems that the costs and benefits of certification is not equally distributed along the chain, where roasters in consuming countries are the biggest winners, and farm owners the biggest losers (Barreto Peixoto et al., 2023). Furthermore, the lack of actual, positive effects of CS on farmers and workers on the ground are traced to the distribution of power between actors in

the chain and the corporate take-over of the concept of sustainability (Grabs, 2017, 2020; Ponte, 2019a), and its reduction to a set of standards and certifications for managing corporate reputation, quality, and risk (Levy et al., 2016). Roasters have not abandoned their “core business practices based on competitiveness and buy-low-sell-high profit maximization” (Grabs, 2020). Moreover, the use of sustainability labels is considered a powerful tool for the already powerful actors in the value chain to differentiate their products, as well as remaining competitive and legitimate in the eyes of society (Ponte, 2019), and shape the definition and implementation of sustainability in a way that allows for the companies to extract maximum value – especially by engaging in on-the-ground implementation and direct responsibility (Grabs, 2017). Rather than positive sustainability outcomes on the ground, there is a multiplication and expansion of “markets for sustainable products and services - and the standard development, certification, auditing, accreditation and consulting industry” (Ponte, 2019b, p. 174). As Ponte puts it, “In the name of sustainability, a massive transfer of value is taking place from the Global South to the Global North, from producers to global buyers and consumers, and from labor to capital” (Ponte, 2019, p. 133).

In his book *Business, power and sustainability in a world of global value chains*, Ponte (2019a) draws upon over 15 years of theoretical engagement and field research to examine the interaction of sustainability governance and GVCs. In the case of the coffee chain, Ponte (2019a) finds that the use of VSS is merely leading to a “sustainability squeeze” of suppliers in the Global South, where lead firms are “leveraging sustainability for profit maximization” (Ponte, 2019a, p. 133), extracting more information from suppliers, strengthen power relations to their advantage, and find new venues of value creation and capture. All in the name of sustainability. Consequently, the implementation of VSS in the coffee industry is considered reinforcing existing asymmetries in the distribution of power, benefits and risk, within countries, across countries and regions, along the coffee chain (between producers, processors, traders, retailers), and among different groups of actors (small- versus large-scale operators) (Ponte, 2019a). While harvesting the benefits of VSS, lead firms are still placing blame on upstream actors (suppliers, producer and governments) for the negative sustainability issues in the chain (Ponte, 2019b, p. 174).

## 6.4 Conclusion

In this chapter I have explored to what extent Joh. Kaffe’s HRDD benefit workers on Brazilian coffee farms through the purchase of RFA certified coffee and engagement with

Brazilian first-tier suppliers. The main finding in this chapter is that we do not know exactly what the actual effects of Joh. Kaffe's HRDD is on Brazilian workers on coffee farms, both within and outside of their own value chain. However, the empirical material in combination with existing literature indicate that there is no reason to assume that workers benefit from Joh. Kaffe's approach to HRDD. Furthermore, the findings in this chapter indicate that Joh. Kaffe's approach to HRDD implementation may be counterproductive to achieve livelihood improvements for both Brazilian workers and small-scale coffee farmers. However, more transparency and context-specific research are necessary to assess whether this is the case. While Joh. Kaffe's communicated HRDD provide information on their implemented measures to address the risk of labor rights violations on Brazilian coffee farms, key pieces of information are lacking.

First and foremost, on actors and production sites down to farm-level. This type of information is essential to link Joh. Kaffe to actual and potential labor rights violations, for workers and their representatives to be able to inform Joh. Kaffe's HRDD, and for the public to hold Joh. Kaffe accountable if violations occur and Joh. Kaffe fails to meet their responsibility to address this. Secondly, more transparency is needed on the different processes constituting Joh. Kaffe's HRDD. This is particularly related to the RFA process of obtaining certification through a social audit, but also for general information about Joh. Kaffe's expectations regarding engagement with workers and their representatives in Brazil. Thirdly, and related to the two previous types of transparency, there is a lack of transparency on economic transactions between actors in the coffee chain. This makes it impossible to (1) verify whether Joh. Kaffe's purchasing practices align with their HRDD demands, (2) understand how costs and benefits are distributed along the value chain, also in the case of RFA certification. This is particularly important in the GVC of coffee given what is known about the unequal distribution of costs, benefits and power in the chain, and the role of VSS to reinforce these dynamics at the expense of workers and small-scale coffee farmers (Ponte, 2019a).

As such, the overall finding in this chapter is that, while it is essential to know how Joh. Kaffe implement HRDD, key pieces of information are missing to be able to verify and assess Joh. Kaffe's HRDD, and consequently their actual positive and negative effects for wage workers on Brazilian coffee farms. Therefore, I argue that more transparency is needed on supply chain actors and locations, key processes such as social audits to obtain RFA certification, and economic transactions between actors involved in the HRDD process. This

transparency is essential to be able to verify and assess Joh. Kaffe's implementation of HRDD, and whether this approach benefits, or worse – contribute to the infringement, of workers' rights on Brazilian coffee farms. The lack of these types of information in the case of Joh. Kaffe illustrates a central limitation of the Norwegian Transparency Act. Namely that it is not providing the right type of, nor enough, transparency. This will be elaborated on in the following chapter.

## Chapter 7 The lack of meaningful transparency under the Transparency Act

This chapter aims to discuss to what extent the findings in the previous chapter are reflected in the design and implementation of the Norwegian Transparency Act as a mHRDD law. As such, the purpose of this chapter is first and foremost to explore the potential of the Transparency Act to benefit rightsholders in the case of Joh. Kaffe and workers on Brazilian coffee farms in their value chain. However, as I argue that the findings in the studied case are reflected in the overall design and implementation of the Transparency Act, this chapter also sheds light on overarching challenges for the Transparency Act to contribute to the improvement of human rights and working conditions in GVCs through its informational requirements.

In chapter 2, I argued for the importance of lawmakers of mHRDD laws to mandate corporate disclosure of information which is meaningful for the protection of human rights. Either directly for rightsholders to claim fulfillment of their rights and for companies to be held accountable for infringing on human rights, or indirectly through providing rightsholders and the public with the kind of information needed to verify and assess corporate conduct of HRDD, and thus inform the measures implemented by states to implement mHRDD laws – and other measures – which may contribute to the protection of human rights in GVCs.

The chapter is divided in three sections. Firstly, I argue that the Transparency Act institutes the wrong kind, and insufficient amounts, of Transparency, to fulfil its purpose of contributing to the promotion of decent working conditions in GVCs. Here, I circle back to Gardener's (2019) different types of transparency in the context of HRDD. The Transparency Act lacks sufficient traceability- transparency, is ambiguous in terms of process-transparency, and does not even cover economic and financial transparency (7.1). Secondly, I discuss the problematic nature of outsourcing responsibility. Relying on third party CS as an important part of HRDD undermines the purpose of HRDD and pulverizes responsibility (7.2). Thirdly, I address the overall failed attempt of the Transparency Act to improve working conditions and living wages in GVCs through informational requirements (7.3).

### 7.1 The types of transparency lacking in the case of Joh. Kaffe

In this section I argue that the studied case of Joh. Kaffe indicates that the Transparency Act requires too little transparency to address information asymmetry and hold companies accountable for potential failure to meet their responsibility to respect human rights. This section addresses the lack of meaningful transparency as an overall limitation of Joh. Kaffe's HRDD to assess whether their process benefits workers on Brazilian coffee farms.

Firstly, I address the lack of traceability information down to farm-level in Joh. Kaffe's value chain, where forced labor is identified to occur, and link this to the explicit lack of this type of informational requirement from companies covered by the Transparency Act (7.1.1). Secondly, I address the lack of transparency on the process of Joh. Kaffe's HRDD, such as the use of RFA certification and Joh. Kaffe's communicated attempt to access workers perspectives in Brazil. Here, I argue that it is ambiguous to what extent this information is expected from Joh. Kaffe according to the Transparency Act (7.1.2). Thirdly, I address the lack of transparency on economic transactions between actors in Joh. Kaffe's Brazilian value chain. This type of information is seemingly not even on the table in the Transparency Act, which I argue is particularly problematic as it becomes impossible to verify and assess whether economic purchasing practices align with HRDD demands and thus if HRDD demands is merely creating a down-wards pressure of responsibility and costs in the coffee chain (7.1.3).

#### 7.1.1 A lack of traceability down to farm-level

The fundamental problem of lacking traceability-transparency is actually quite straight forward. Because there is no transparency on which farms in Brazil are part of the value chain of Joh. Kaffe, there is no way to know who the rights holders – farmers and especially workers – in the specific chain of Joh. Kaffe, is. Although all coffee from Brazil is claimed to be RFA certified and traceable from Joh. Kaffe down to farm level (Traceability manager – Cooxupé, Feb 2023; E-mail correspondence with RFA Brazil, March 2023), Joh. Kaffe does not know– or aspire to know - who the farmers and farm workers in their value chain are. And most crucially, this information is not made publicly available.

This makes it impossible to establish the relationship between Joh. Kaffe and adverse impacts on human rights in their value chains. Consequently, this lack of transparency makes it impossible to fundamentally assess whether their HRDD process is sufficient according to the UNGPs. There is a difference between human rights risks, which are to be understood as “the business enterprise's potential adverse human rights impacts”, and actual impacts –

“those that have already occurred”. The risk assessment expected from companies in the agricultural value chain is to include risks of potential and actual adverse human rights impacts caused by, contributed to or linked to “the operations, processes, goods and services of the enterprise and its business partners” (OECD-FAO, 2016, p. 36).

All business enterprises in agricultural value chains should “systematically work towards a complete picture of their business relationships” and is consequently expected to map the various actors involved with the value chain as a part of their risk assessment, such as first-tier suppliers, business partners and production sites (OECD-FAO, 2016, p. 35). The purpose of accounting for the process of HRDD is for states and the public to be able to verify corporate compliance with HRDD, and access information and – furthermore, to hold companies accountable. If the companies do not know their supply chain tiers where the risk of modern slavery actually happens – which is at farm level – how can they know if it is only a risk of modern slavery or actual practices of modern slavery in their value chains?

As presented in chapter 5, Joh. Kaffe relies heavily on their Brazilian suppliers when it comes to HRDD. This is not uncommon in the coffee industry. To analyze whether the HRDD performed by Joh. Kaffe is sufficient, I consider it essential to know the name of their suppliers. The extent of information collected on business partners depends on the severity of risks, how closely linked to the identified risks they are, as well as the performance of business partners in managing human rights risks (OECD-FAO, 2016).

To drive meaningful change for workers in GVCs, mHRDD laws should secure greater transparency and traceability of corporate supply chains by requiring companies to trace their supply chains and make this information available publicly (Shamir et al., 2023). The companies and the public needs to know the exact location labor rights violations occur, and the rightsholders and their representatives needs to know the actors at the top of the chain to be able to hold them accountable. Traceability down to farm level is a key element of the RFA certification, and all RFA certified coffee farms are published on their websites. RFA certification could consequently be considered a valuable tool for Joh. Kaffe for their HRDD to benefit wage workers on Brazilian coffee farms. According to Cooxupé, any RFA certified coffee purchased by Joh. Kaffe can be traced down to farm level (Sustainability manager – Cooxupé, Feb 2023).

“If Joh. Kaffe sends the contract they have with Cooxupe, or the order they sent, or the billing or NO BL, Cooxupé can go backwards from Norway to Brazil and find the farm and the cooperative member” (Traceability manager – Cooxupé, Feb 2023).

As such, Joh. Kaffe can request information from their Brazilian suppliers on exactly what farms are part of their value chain. However, Joh. Kaffe does not utilize this opportunity. This makes it impossible to directly link Joh. Kaffe to any actual labor rights violations on Brazilian coffee farms, which hinder corporate accountability and for rightsholders in their value chain to inform Joh. Kaffe’s HRDD process and submit complaints if violations do occur (Oxfam Brazil, 2021). Furthermore, it hinders verification and assessment of the actual situation of wage workers, and thus compliance with HRDD and RFA requirements (Nab & Maslin, 2020; Partiti, 2022).

The importance of transparency down to farm-level also emerged as an issue of importance during interviews with workers, ADERE-MG and local trade unions. One of the interviewees from ADERE-MG argued that if they know “the exact producer supplying coffee to company X, it becomes easier to hold buying companies accountable – at least in the eyes of society – if human rights violations do occur and the companies fail to address this” (ADERE-MG 1, 2023). When talking about what corporate responsibility is, one of the interviewed coffee workers stated that “I think that the right thing to do for the company who wants to buy coffee, is to ask to see the farms where they are buying coffee from. How the coffee is produced, by whom, how the farm is organized” (Worker 2, February 2023).

As a downstream agricultural enterprise, Joh. Kaffe is expected from the OECD-FAO Guidance to systematically map all actors in their supply chain (OECD-FAO, 2016). When asked about the lack of disclosure about farms in their Brazilian value chain, both Joh. Kaffe and Norgesgruppen stated that they know about the traceability mechanisms inherent to RFA certification, and that they would disclose this information if there was a specific purpose (Sustainability manager - Joh. Kaffe, March 2023). It did not become clear to me under what conditions Joh. Kaffe find it necessary and fruitful for their HRDD to publicly disclose information about the farms in their Brazilian value chain. However, due to existing research arguing for the importance of traceability information in the context of working conditions in GVCs, and that Brazilian coffee farms are the location of labor rights violations, I argue that the lack of disclosure about farms in their Brazilian value chain can be considered a weakness

of Joh. Kaffe's HRDD to benefit workers on Brazilian coffee farms. Especially given how easy this would be to do through the RFA certification.

Representatives of Brazilian coffee workers are quite explicit in how such transparency would help them. Public traceability would provide workers with crucial negotiation power and leverage. This was clearly stated by informants I talked to in Brazil.

“For us to know and fight our enemies, we have to know him and see what weapons he uses, and how he uses them. What we always question companies about is who their suppliers are. Because if you enter their websites, you will not find a supplier list. We want official information on transactions of coffee and money between the companies – because we “know” that every company is involved with others, and various farms. This is how we can do collective bargaining for workers' rights, and salaries. To ensure an actual fair salary. And to negotiate with the producer, you need to know who they are. We are being denied information here, so we need information from you.” (ADERE-MG 1, Feb 2023)

Moreover, the importance of traceability for verifiability is well formulated by ECOM, one of the world's largest agricultural trading companies, and also one of Joh. Kaffe's suppliers:

“When we understand something, we can improve it. The traceability of our supply chains underpins our trustworthiness as a group – because we know where our commodities come from, we can make sure they're grown sustainably and responsibly. For ECOM, our clients and the end consumer, transparency and traceability are key. Only by shining a light on our supply chains, from end to end, can we be sure we're having the impact we are working for” (ECOM, 2023, p. 34)

In summary, the identified high risk of severe labor rights violations is identified on Brazilian coffee farms. As long as Joh. Kaffe does not know which exact farms are in their GVC, they cannot know if they are linked to actual, or 'merely' potential labor rights violations. This is obviously convenient for Joh. Kaffe. Being linked to actual impacts are more severe. While potential impacts are to be addressed through prevention or mitigation, actual impacts should be a subject for remediation (United Nations, 2011, p. 18). Furthermore, as long as the public does not have access to this information, companies cannot be held accountable. This makes further knowledge production on root causes and solutions harder and makes the work of right-holders – such as farmers, workers and their

representatives - almost impossible. Without traceability, company responsibility relies only on trust, not on accountability.

### *Traceability in the Transparency Act*

The drafters of the Transparency Act – the Ethics Information Committee – did see this issue. Consequently they proposed an obligation on companies to inform about production sites in corporate supply chains<sup>15</sup> (Norwegian Ethics Information Committee, 2019). The rationale behind including production sites was the key role of transparency to drive change and providing actors – such as trade unions and CSOs – with useful information to examine conditions in more detail and improve the impact of their work. Furthermore, “making information about the place of production publicly available and not only on request will make the information more easily accessible and will also be able to protect the identity of the information seeker”, which is considered “particularly important for employees who are active in trade unions and the like and fear reprisals” (Norwegian Ethics Information Committee, 2019).

However, the duty to inform about production sites did not enter the final legal text of the Transparency Act. The Prop. 150 (2020 – 2021) did not propose to require this information from companies, as they identified “a need for thorough assessment of whether the Transparency Act should contain an obligation to publish information about the place of production and what this obligation should include in that case, so that it is appropriately designed to achieve its purpose and at the same time does not place excessive burdens on the businesses” (ibid., p. 86). The ministry also points out that “the obligation to report on the due diligence assessments and the obligation to provide information will ensure increased access to information from the businesses and will thus contribute to increased transparency in the businesses and their supply chains” (Prop. 150 L (2020 –2021) - Lov Om Virksomheters Åpenhet Og Arbeid Med Grunnleggende Menneskerettigheter Og Anstendige Arbeidsforhold (Åpenhetsloven), 2021, p. 86).

As such, the Transparency Act requires companies to be transparent about (1) their human rights impacts – potential and actual, which is key to set a baseline for assessing the

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<sup>15</sup> The original mandate of the Ethics Information Committee was “to examine and report on whether it is possible and practicable to impose a duty on enterprises to provide information to consumers and organizations about their production sites, and how they exercise responsible conduct and manage their supply chains” (Ethics Information Committee, Supply Chain Transparency, p. 9).

performance of the actors involved (Gardner et al., 2019); (2) the policies and actions intended to address human rights impacts, which refer to the supply chain actors' policies and commitments to improve their sustainability performance and the processes through which changes in performance will be assessed (Gardner et al., 2019), and ; (3) the effectiveness of efforts to improve on-the-ground conditions, aiming to provide transparency on “how much (or little) progress is being made by a given supply chain actor” (Gardner et al., 2019). As such, the Transparency Act mandates companies to be transparent about their HRDD process. This is what they have to account for.

According to the Act, the accounts has to at least include: “(a) A general description of the enterprise’s structure, area of operations, guidelines and procedures for handling actual and potential adverse impacts on fundamental human rights and decent working conditions; (b) Information regarding actual adverse impacts and significant risks of adverse impacts that the enterprise has identified through its due diligence; (c) Information regarding measures that the enterprise has implemented or plans to implement to cease actual adverse impacts or mitigate significant risks of adverse impacts, and the results or expected results of these measures” (Section 5, Transparency Act, 2022).

The monitoring, enforcement and sanctions related to the Transparency Act is placed with the Consumer Authority, which is also to provide guidance to the business enterprises covered by the law (Transparency Act, 2022). Infringement penalties are limited to the requirements of providing information, and companies will not be sanctioned if failing to meet the duty to implement a process of HRDD (Consumer Authority, 2023). However, “enterprises that have not performed HRDD will have difficulty in complying with the information obligations, which can be sanctioned with infringement penalties” (Consumer Authority websites, 2023). Section 6 also specifies under what conditions a request for information may be denied, such as the request being unreasonable, not providing sufficient basis for identifying what the request concerns and for competitive reasons (Section 6, Transparency Act, 2022).

Section 6 in the Transparency Act also introduces ‘the right to information’. The right to information means that “upon written request, any person has the right to information from an enterprise regarding how the enterprise addresses actual and potential adverse impacts pursuant to Section 4. This includes both general information and information relating to a specific product or service offered by the enterprise” (Section 6, Transparency Act, 2022).

Section 6 also specifies under what conditions a request for information may be denied, such as the request being unreasonable, not providing sufficient basis for identifying what the request concerns and for competitive reasons (Section 6, Transparency Act, 2022).

According to the Consumer Authority, business enterprises are not under obligation to name production sites when answering information requests. This includes the name or address for factory or facility where the largest share of the product is assembled. The enterprises are also not under obligation to provide other information which may help identify the production site. To be able to respond comprehensibly to an information requirement about how to handle negative consequences associated with production or a production site, it may nevertheless be necessary to include certain factual information related to the production site, such as where in the world the production takes place. However, how precise geographic information the information seeker is entitled to depends on each case. Relevant factors to do such an assessment will be what is required to adequately answer the relevant information requirement, consideration of verifiability, and the principles of risk-based approach and proportionality. Finally, the Consumer Authority states that “it should be possible to provide a covering and precise information on human rights and decent work related to production, without naming the production site” (Consumer Authority, 2023). The rationale behind this assumed causal mechanism is not elaborated on or given any examples on.

The business enterprises do not have a general duty to name suppliers or publish supplier lists when information seekers request it. They have a duty to respond to the relevant information requirement, based on how the business handles negative consequences. Concrete names and lists are not always necessary to answer this. In some cases, however, it may be necessary to name specific suppliers to fully respond to the information requirement, unless it falls within the exceptions for place of production, trade secrets or other reasons for refusal. This must be assessed in each individual case, based on, among other things: Whether the information requirement is sufficiently specified, if the information requirement applies to concrete negative consequences, consideration of verifiability or the principles of proportionality and risk-based approach (Consumer Authority, 2023).

### 7.1.2 Process transparency

As explained in detail above, the Transparency Act requires companies such as Joh. Kaffe to be transparent on their HRDD implementation. Indeed, the communicated HRDD of Joh. Kaffe has been crucial for me to conduct this research project, which could be contributed to

the Transparency Act mandating corporate disclosure of HRDD and the right to information. From Joh. Kaffe's communicated HRDD in the annual report and Transparency Act inquiry (see Appendix B), I have been able to obtain information on how Joh. Kaffe identifies and address human rights risks in their GVC of coffee. Furthermore, results of their risk assessment and thus what geographic areas and human rights Joh. Kaffe is choosing to prioritize for the purpose of their HRDD. Furthermore, Joh. Kaffe responded to my written request regarding their HRDD in the Brazilian context of coffee production within the three weeks (see Appendix B) and provided comprehensive information on their risk assessment in the GVC of coffee in general, and rationale for their further prioritizations, among other on labor rights and living wages in the Brazilian context, as well as the measures they had implemented to address this risk. This information enabled me to further explore the value chain of Joh. Kaffe and assess the different HRDD measures of Joh. Kaffe, as presented in chapters 5 and 6.

More importantly, although only communicated to me during interviews, I have obtained information on who the Brazilian first-tier suppliers of Joh. Kaffe are. Due to Joh. Kaffe's position in the coffee chain as 'merely' an importer, information on first-tier suppliers has been essential for me to trace the Brazilian value chain of Joh. Kaffe and enabled me to do my own assessment of their HRDD. Furthermore, Joh. Kaffe chose to inform me about their first-tier suppliers in Brazil, and made themselves available for conversations, sharing of documents and first-tier suppliers – as well as put me in contact with some of their Brazilian first-tier suppliers - which could be considered beyond the requirements of the Transparency Act, but maybe an indirect consequence of its design and implementation.

### 7.1.3 Transparency on economic transactions

The third type of openness sorely lacking in the Transparency Act is financial transparency on economic transactions and purchasing practices. This is not covered by the Transparency Act. This is a crucial limitation, as financial transactions and purchasing practices is what ultimately drives the economically motivated behavior that may lead to human rights infringements in the value chain. It has been argued that labor standards will only be implemented and maintained if they improve productivity, or if there is a price premium large enough to cover the costs (Barreto Peixoto et al., 2023). In other words, if farmers' profits are increased through the RFA certification, it would in theory be easier for farmers to pay their workers a living wage and ensure their labor rights. This makes intuitively sense. The

economic capacity of the farm owners is a precondition for workers' wages and labor rights. The producer's lack of ability to afford the financial cost of meeting certification standards – also regarding labor rights, is one of the reasons why CS are failing to detect, address, and prevent forced labor (LeBaron, 2021). However, there is no identified causal relationship – or even correlation - between the economic situation of coffee farmers and the wages and working conditions of their hired labor. Existing research indicate that the wages of farm workers in the agricultural sector do not seem to benefit from the presence of CS (Oya et al., 2018). There is no point in finessing CSR schemes if purchasing practices are not aligned with the responsibility demands (LeBaron, 2021).

There are calls for more research on the benefits companies derive from their CSR commitment where attention is deflected from the core business models of the companies and the uneven value distribution in GVCs (LeBaron et al., 2022, p. 99). There is still a lack of transparency about the premiums that the producers may receive with certification (Barreto Peixoto et al., 2023). According to Ponte (2019), VSS are merely a corporate legitimizing tool which shift power in favor of lead firms and capital at the expense of workers – and others - in GVCs. LeBaron (2021) explicitly mention RFA as an example of CS designed to create loopholes around the most vulnerable workers in supply chains (e.g. hired day labour, or those who enter supply chains through informal labor subcontracting), rather than bring these to light' (LeBaron, 2021). As CS in general have received criticism regarding the unequal distribution of economic burden and benefits along the value chain, RFA is currently working towards distributing more equally along the chain (Joh. Kaffe, 2022; Sustainability manager – Joh. Kaffe, March 2023). For VSS to be able to tackle human rights issues in GVCs, there must be an improvement of transparency – and rigor of standards - especially around wages, pricing, and worker organization (Bennett, 2022).

The efficiency of corporate HRDD CoC need to be complemented by purchasing practices to be effective (Smit et al., 2021). Irresponsible sourcing practices have been listed as one of the root causes on the demand side for forced labor (LeBaron, 2021). Companies requiring their suppliers to comply with their expressed human rights policies, often have purchasing practices which do not align with these demands CoC (Smit et al., 2021). This can be related to prices, lead times and technical specifications, and expecting suppliers to pay for required audits and human rights capacity building themselves (Smit et al., 2021). According to the UNGPs, companies should align their purchasing practices with the HRDD demands they express to their suppliers. Companies are to “provide adequate resources and training to

suppliers and other business relationships for them to understand and apply the relevant RBC policies and implement due diligence” and “seek to understand and address barriers arising from the enterprise’s way of doing business that may impede the ability of suppliers and other business relationships to implement RBC policies, such as the enterprise’s purchasing practices and commercial incentives” (OECD, 2018, p. 24). Without the alignment of purchasing practices – which may include provision of financial and resources support for supplier – suppliers may accept orders below production costs, which in turn leaves them unable to pay living wages, or even minimum wages (Smit et al., 2021).

At farm level, the coffee industry has a long way to go to achieve decent work – both for small-scale farmers as well as wage workers. Wage workers on Brazilian coffee farms frequently work under poor conditions, lack basic labor rights and living wages, and are consequently vulnerable to exploitative practices such as forced labor. Wage workers may ‘choose’ to keep on working under poor conditions and get paid poorly, as this is better than the alternative of having no job. Workers trapped in modern slavery in the supply chains of a corporation may not be aware of their rights or may lack the ability and will to complain about violations of their labor rights due to their dependency on such exploitative jobs for survival (Deva, 2023, p. 392). This is part of the root causes on the supply side of forced labor, and is essential to understand and address to eradicate indecent work (LeBaron, 2021, p. 32). In the Brazilian context of coffee and work, poverty, identity, and discrimination, limited labor protections, and restrictive mobility regimes as political economic factors that create a supply of people vulnerable to forced labor.

This was also reflected in stories my informants told me. As reflected in the quote below.

“They say that they are afraid of becoming “marked” as a bad worker – do you remember the Whatsapp list that Jorge showed us, of the workers who were rescued? And they say that the union only atrapalha. There has been created a culture where the union is bad, that the labor inspector is bad, and the carteira is bad, and that the farm owner is a poor angel who is giving him a job” (ADERE-MG 3, 2023).

LeBaron (2021) argues that BHR research would benefit from paying greater attention to the practices which are within corporate control and scope to change, such as wages; commercial and sourcing practices; business to business relationships within value chains;

uneven value distribution along supply chains; and adherence to labor laws and standards (LeBaron, 2021, p. 25)

However, there are also root causes of forced labor and indecent working conditions on the demand side for forced labor, such as concentrated corporate power and ownership, outsourcing (along both product and labor supply chains), irresponsible sourcing practices, and governance gaps (LeBaron et al., 2018). These are key factors creating a “stable and predictable business demand for forced labor across many supply chains” (LeBaron, 2021, p. 32). Value has become unevenly distributed in several GVCs, concentrated among actors at the top of the chain (ibid.). Income has been increasingly skewed in favor of capital and high wage earners in wealthy countries since the mid-1990s (Aguiar de Medeiros & Trebat, 2017; Sung et al., 2021). In these cases, suppliers are faced with thin profit margins, being squeezed, and continue to squeeze downwards the chain (LeBaron, 2021). Using the global apparel industry as an example, Anner (2017) has found that increased competitiveness has resulted in greater cost pressures on suppliers, where some suppliers have tried to squeeze workers and keep costs low through union avoidance strategies (Anner, 2017). Sung et al. (2021) found declining union density and economic openness as a factor influencing the difference how capital and labor divide gains from production. Low wages, wage violations and suppliers under pressure to minimize costs give rise to forced labor (LeBaron, 2021).

Wages play an important role in workers vulnerability to exploitation, as workers without the economic capacity to provide for themselves and their families are more likely to end up in situations of labor exploitation, being without the ability to exit such situations and exercise their rights (LeBaron, 2021). Consequently, decent wages and commercial conditions to support them are prerequisites to prevent workers vulnerability to end up in situations of forced labor, and thus crucial to protect human rights (LeBaron, 2021). The role of living wages to prevent labor rights violations have been overlooked by BHR scholars and policymakers, and should be taken more seriously given their crucial role, also to heighten corporate accountability (LeBaron, 2021).

#### 7.1.4 Summary

As argued above, these three types of transparency are crucial for mHRDD legislation to be effective. In its current form, the Norwegian Transparency Act does not institute these forms of Transparency to a sufficient degree. This constitutes a clear and obvious limitation with the Norwegian Transparency Act as mHRDD legislation. Most importantly, the lack of these

types of transparency undermines the main channel through which the Transparency Act was intended to function, namely through the information it makes available for researchers, journalists and right-holders advocate groups. Ultimately, the Norwegian legislature is responsible for this limitation. However, the companies themselves could also do more. However, for the companies, these types of transparency could be detrimental, because it undermines their main line of defence, namely that they did not know. This line of defense is further strengthened by the systematic outsourcing of responsibility, which will be discussed in the following sub-chapter.

## 7.2 mHRDD laws and outsourcing of responsibility

One of the main measures of Joh. Kaffe in their HRDD is the purchase of RFA certified coffee. This brings up the question of whether outsourcing HRDD to third parties is, or should be a legitimate HRDD tool? The findings, analysis and discussion in this thesis have shown that CS, as an expression of VSS, are limited in their actual and potential positive impact on some of the components that really matters for workers on Brazilian coffee farms. Namely, labor rights, wages, and decent working conditions. There is a need for more contextual research and knowledge if CS is to be acknowledged as a legitimate HRDD tool under the Transparency Act. For this, transparency on actors, economic transactions and processes participation, content and results is essential.

As such, Joh. Kaffes CoC and integration of labor rights in documents and questionnaires are key measures to prevent and mitigate the high risk of labor rights violations on Brazilian coffee farms, by functioning as a basis to communicate their human rights expectations to their first-tier suppliers. This aligns with identified corporate practice on HRDD (McCorquodale et al., 2017; Smit et al., 2021). Combining this with the social audits conducted by RFA makes Joh. Kaffes practice aligning with emergent practice of companies to monitor compliance with human rights standards in GVCs (Nolan, 2022).

Voluntary Sustainability Standards, such as RFA, has been the dominant paradigm to attempt to regulate the effects of business on human rights in global value chains over the last decades (Nolan, 2022). VSS offer the opportunity for different actors in the value chain to ‘opt in’ to a regulatory regime that protects human rights to a greater extent than the state does (Bennett, 2022). As such, the responsibility of corporations expressed in the UNGPs, intersects with the sphere of operation of VSS, and the question arises regarding the extent of alignment of VSS with HRDD notions (Partiti, 2022).

‘The arrival of the Norwegian Transparency Act does not (fundamentally) change the way we work. What is expected from us by the Transparency Act is already well integrated in our business model and practice.’ (Sustainability manager of Joh. Kaffe, Nov 2022).

The Transparency Act does not address the challenges arising due to the ambiguous and business-friendly language of the process of HRDD, which makes it prone to cosmetic compliance of the companies covered by mHRDD laws (see 2.1). As is the case with other European mHRDD laws, the Transparency Act does not provide a comprehensive and clear framework for HRDD (Deva, 2023), entering the line of regulatory initiatives where the UNGPs have been reiterated rather than elaborated on (Landau, 2019). Open for corporate discretion and companies relying on existing CSR structures – such as the use of VSS in the case of Joh. Kaffe – which has no proven benefits for Brazilian coffee farmers or wage workers and may constitute a negative contribution.

Joh. Kaffes use of RFA in Brazil was identified as a limitation due to lack of transparency on several components. Transparency Act does not elaborate on the UNGPs, and thus not address the ambiguous, imprecise, and business friendly language characterizing HRDD. No guidance. Scholars have warned that this may constitute a challenge if companies continue to rely on measures such as VSS and social audits, which have been proven inefficient to detect, address and prevent labor rights violations. Thus, opening for the corporate discretion which the UNGPs were designed to avoid to address the shortcomings of VSS. There is little point finessing CSR programs and tools unless there is absolute certainty that business models and GVCs are not configured to give rise to forced labor (LeBaron, 2021, p. 25)

If the relevant evaluating body does not evaluate the effectiveness of the efforts implemented by companies, then the company can avoid liability by simply having them in place, regardless of their adequacy, how well they are implemented in practice or their actual impacts on the lives of rights-holders’ (Smit et al., 2023, p. 10). If mHRDD laws provide weak or unclear legal definitions of HRDD, and focus on compliance over substance, there is a risk that companies will “outsource their human rights risk assessments to third-party auditing firms to meet procedural requirements” (Nolan, 2022).

Furthermore, Nolan (2022) warns that clarity and consistency from states is needed on the mandated components of HRDD, as a lack of this may result in companies using familiar

tools such as social auditing and VSS, which does little to prevent or remedy adverse human rights impacts, such as indecent working conditions (Nolan, 2022). To meaningfully address the human rights impacts of global supply chains, it is incumbent upon both governments and companies to move beyond their heavy reliance on social auditing and embrace a more comprehensive due diligence program. Legislation that both mandates due diligence and provides guidance on its format (for instance by incorporating reference to OECD sector specific guidance) is a necessary step that could significantly improve the regulation and transparency of supply chains” (Nolan and Frishling, 2020, p. 129)

Furthermore, the role of social auditing to identify, prevent and address labor rights violations have been problematized thoroughly. The HRDD process of Joh. Kaffe is not directly reliant on social auditing. However, the purchase of RFA certified coffee is one of the main communicated measures implemented to *address* the high risk of labor rights violations on Brazilian coffee farms, where auditing of farms is the means through which farms obtain the RFA certificate. Chapter 6 provided insight into the problematic aspects of social auditing in the Brazilian context of labor rights violations of wage workers on coffee farms. The Transparency Act does not provide any clarity on whether this constitute compliant HRDD or not. Social auditing is claimed to still be one of the primary tools by companies implementing HRDD (McCorquodale & Nolan, 2021; Nolan, 2022; Nolan & Frishling, 2020). The use of social auditing in the implementation of HRDD may result in cosmetic compliance (McCorquodale & Nolan, 2021), and a concealment of human rights issues (LeBaron & Lister, 2015). Consequently, companies using social audits must support this with a broader, ongoing HRDD (Smit et al., 2021). However, by focusing on symptoms (low wages and forced overtime) rather than root causes (why labor rights violations persist), the audits often overlook the role of a lead firm’s own business model and purchasing practices in contributing to exploitative work practices in their GVCs (Nolan, 2022).

The GVC of coffee characterized by high inequality and asymmetrical power relations, where Ponte (2019) has shown that sustainability measures – such as certifications - does in fact play a role in upholding and enforcing inequalities and power dynamics in the chain. Despite not identifying any context-specific research on certifications (RFA) in the Brazilian context of coffee production, the empirical material gathered for the purpose of this thesis (see chapters 5 and 6) in combination with existing research on VSS, coffee production and decent work and living wages shed light on the problematic aspects of RFA certification in the Brazilian context of coffee production and labor rights. The main problem with VSS

and CS however, is that they take the responsibility away from the companies, and places it at the hands of third parties. Through this process, responsibility is pulverized, and conveniently passed on.

### 7.3 The Transparency Act, mHRDD legislation and labor rights

“Norway, and the money they have, will have to come from somewhere, and the people of Norway will want to continue in the situation that they are. So, the slave work in this country will uphold and increase their wealth.” (Trade Union Varginha 1, Feb 2023)

What does all of this mean for the future of the Transparency Act, mHRDD legislation in general and their potential to improve workers conditions in GVCs? The case of Joh. Kaffe has shed light on key aspects of the Transparency Act which hinder advancement to understand and address labor rights violations in GVCs. Particularly when it comes to transparency on actors, geographic locations and economic transactions of companies GVCs. There remains incoherence between legislative approaches, business practices and the demands of workers and their representatives (Nolan and McCorquodale, 2022). There is little evidence that mHRDD, as currently conceived and popularized in OECD countries, are delivering real and tangible improvements for labor rights (Shamir et al., 2023).

Labor rights are human rights (Buhmann et al., 2019), and severe labor rights violations such as forced labor and child labor are commonly linked to production in GVCs today (Marx et al., 2022), and thus highly relevant to corporate HRDD. Decent work is high on the global agenda for sustainable development and working conditions and labor rights in GVCs have been – and still are – focal areas of human rights in corporate HRDD (McCorquodale et al., 2017; Smit et al., 2021). Although illegal and widely condemned, forced labor is a widespread social issue today, and nearly one of every 150 people in the world find themselves in situations of modern slavery on any given day (LeBaron, 2021, p. 30).

While the focus on labor rights has been pointed out as a challenge in companies overall approach to HRDD as it may result in companies overlook other types of human rights, s only focusing on the risks already known to the company – which are mostly labor rights (Smit et al., 2021), this can be considered an advantage for the research agenda of this thesis as labor rights and decent working conditions have and are considered a familiar and great risk to many companies in their GVC. Among the strategies implemented to raise labor

rights conditions in GVCs, the ‘decent work’ principles of the ILO is a key contribution (Rahim, 2020). According to ILO (2023) ‘Decent work sums up the aspirations of people in their working lives, and involves “opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for all, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men” (ILO, 2023). On the other end of decent work, forced labor includes a “variety of practices that use coercion to extract involuntary labor from people, severely curtailing their freedom; it includes slavery, debt bondage, and human trafficking” (LeBaron, 2021, p. 30).

Workers face a continuum of exploitation, and forced labor is hard to isolate from exploitation more broadly and workers tend to move in between forced labor and more minor forms of abuse in relatively short periods of time (LeBaron, 2021). As such, Nolan (2022) argues that mHRDD laws should not merely focus on the most severe forms of labor exploitation. In contrast to existing regulative attempts merely focusing on the eradication of modern slavery, such as the UK Modern Slavery Act from 2015 (see McCorquodale et al., 2017), the Transparency Act has a broader approach – aiming at decent work, indicating positive potential for labor rights efficiency. Furthermore, wages play an important role in workers vulnerability to exploitation, as workers without the economic capacity to provide for themselves and their families are more likely to end up in situations of labor exploitation (LeBaron, 2021). In their case study on the French vigilance law Lafarre & Rombouts (2022) find that there are indications that the law positively affects corporate human rights conduct, especially in the practices of companies considered laggards. As such, they argue for the need to increase mandatory requirements (Lafarre & Rombouts, 2022). However, for HRDD to be a tool to improve corporate respect for labor rights, there is a need for further refinement and more analysis on the particularities of labor rights in practice and in the context of the corporate implementation of HRDD (Trebilcock, 2015).

#### 7.4 Summary

In this chapter I have made three main points. First, that the transparency act institutes the wrong type, and insufficient amounts of transparency. Second, that outsourcing of responsibility through VSSs and CSs undermine the fundamental responsibility of businesses to conduct their own HRDD, conveniently pulverizes responsibility and thus disables

important accountability mechanisms. Finally, I argue that these issues constitute important challenges for both the Norwegian Transparency act specifically, and mHRDD legislation in general. Challenges that need to be solved for mHRDD to be an effective tool in the important and unending fight against human rights infringements in global value chains. The consequence is that mHRDD risks becoming a tick-box exercise, where cosmetic compliance, rather than substantial change for right holders, is the name of the game.

## Chapter 8 Concluding remarks

The Norwegian Transparency Act of 2022 represents a broader trend in that countries of the Global North implement mHRDD laws, with the purpose of enhancing corporate respect for human rights as envisaged by the UNGPs. While the actual effects of mHRDD laws are under assessment, doubts about their value to contribute to the protection of human rights have emerged. All mHRDD laws enacted thus far have different approaches to mandating the process of HRDD. In the Norwegian Transparency Act, informational requirements regarding corporate implementation of HRDD are portrayed as the key mechanism through which the law is supposed to benefit rightsholders. This thesis has aimed to test this mechanism and constitutes a contribution to the field of BHR as a study on the potential of mHRDD laws to benefit rightsholders in the GVCs of companies covered by mHRDD laws.

The promise of the Transparency Act to benefit rightsholders through informational requirements have been tested through a case study of the HRDD of one company covered by the Act. Namely, the HRDD of the Norwegian coffee company Joh. Kaffe (chapter 3 – A case study of the HRDD of Joh. Kaffe). Furthermore, Brazil as a geographic context of HRDD implementation has been explored, due to the well-known risk of indecent working conditions on Brazilian coffee farms in combination with the size of Brazil in the global coffee industry. As such, the aim of this thesis has been to test the promise of the Transparency Act as a mHRDD laws through a qualitative case study of Joh. Kaffe's HRDD in their Brazilian value chain of coffee.

The research questions that have been answered in this thesis are the following:

1. *How does Joh. Kaffe implement HRDD in their Brazilian value chain?*
2. *To what extent does Joh. Kaffe's HRDD benefit workers on Brazilian coffee farms?*
3. *How are the identified strengths and limitations of Joh. Kaffe's HRDD reflected in the implementation of the Norwegian Transparency Act as a mHRDD law?*

The findings in this thesis are informed by a combination of existing legal- and policy analysis, with insights gained empirically through five weeks of field work in the Brazilian state of Minas Gerais, and exploratory, semi-structured interviews with actors in Norway and

Brazil (See chapter 4 for details on the methods employed). Like the research questions, the findings in this thesis are three-fold.

Firstly, I explored how Joh. Kaffe has chosen to implement HRDD (chapter 5). In brief, Joh. Kaffe has identified a risk of severe labor rights violations on the Brazilian coffee farms in their value chain. As a company importing coffee from Brazil, Joh. Kaffe is linked to potential and actual human rights violations on Brazilian coffee farms through their suppliers. Therefore, they are expected from the UNGPs to integrate human rights expectations with their Brazilian suppliers. Joh. Kaffe communicated that three main measures are aimed at reducing the risk of labor rights violations in their Brazilian value chain. Firstly, to ensure that their relationship with Brazilian first-tier suppliers facilitate further implementation of HRDD in Brazilian coffee production. Secondly, to purchase coffee certified by RFA. Thirdly, to collaborate with other European coffee companies in ICP.

Secondly, I explored to what extent and how Joh. Kaffe's implementation of HRDD is likely to benefit workers on Brazilian coffee farms (chapter 6). The empirical material in combination with existing research presented, indicate that the way Joh. Kaffe understands and implements HRDD has several limitations to benefit workers on Brazilian coffee farms. This holds for both how Joh. Kaffe is integrating labor rights expectations with Brazilian first-tier suppliers, as well as the choice of purchasing RFA certified coffee. Consequently, I argued that more research is needed on wage workers on Brazilian coffee farms, and that more transparency is needed regarding supply chain actors, economic transactions and on the processes central to Joh. Kaffe's HRDD, such as their attempt to get informed by workers perspectives, and the social audit of RFA to obtain certification.

Thirdly, I discussed to what extent the findings in chapters 5 & 6 are reflected in the design and implementation of the Norwegian Transparency Act, as the mHRDD law by which Joh. Kaffe is covered (chapter 7). Here, I presented arguments for why and how the identified limitations of Joh. Kaffe's HRDD to benefit workers on Brazilian coffee farms are reflected in the implementation of the Transparency Act. My main argument is that the Transparency Act institutes both the wrong type, and insufficient amounts, of transparency.

First, the Transparency Act does not address issues of financial transparency needed to make sure companies' purchasing practices and other economic behavior is not counteracting their HRDD. Second, although originally part of the proposed draft, the Transparency Act

does not explicitly institute transparency in terms of traceability. This makes it almost impossible to hold companies accountable for specific human rights violations. Third, although this is considered the key mechanism in the act, the act is ambiguous in relation to what information needs to be provided in response to inquiries related to the companies HRDD processes. Crucially, this constitutes a lack of clarity from the Transparency Act on what compliant HRDD is supposed to look like, which result in corporate discretion to implement measures which do not efficiently contribute to the protection of human rights. Transparency on the process of VSS and economic transactions are needed to be able to assess the actual effects of VSS to assess whether VSS are to be considered compliant HRDD tools under mHRDD laws. Finally, I concluded that the Transparency Act – beyond the case of Joh. Kaffe - does not provide the public with key information necessary to improve the working conditions and wages of workers in GVCs.

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## Appendices

### Appendix A: Interviews with Norgesgruppen and Joh. Kaffe

\* Online interview

<b>GIVEN NAME</b>	<b>ROLE</b>	<b>WHEN</b>	<b>HOW</b>
<b>Sustainability manager - Norgesgruppen</b>	Sustainability manager of Norgesgruppen, responsible for HRDD	Oct 2021	Individual interview
<b>Sustainability manager - Norgesgruppen</b>	Sustainability manager of Norgesgruppen, responsible for HRDD	Sept 2022	Individual interview
<b>Sustainability manager - Joh. Kaffe</b>	Sustainability manager of Joh. Kaffe, responsible for HRDD	Nov 2022	Individual interview
<b>Sustainability manager - Norgesgruppen</b>	Sustainability manager of Norgesgruppen, responsible for HRDD	March 2023	Individual interview*
<b>Sustainability manager - Joh. Kaffe</b>	Sustainability manager of Joh. Kaffe, responsible for HRDD	March 2023	Individual interview
<b>Trader - Joh. Kaffe</b>	Trader in Joh. Kaffe, direct contact with Brazilian suppliers	Jan 2023	Phonecall

#### General interview guide:

As all interviews have been semi-structured and open-ended, the questions below are only examples of topics that were covered during the interviews.

- How do you work with social responsibility in your value chains?
- How do you work with the Transparency Act?
- How are you communicating the requirements in the Transparency Act to your suppliers?

- Are you facing any specific challenges regarding HRDD implementation?
- How do you work with the Brazilian context of human rights?

## Appendix B: Transparency Act inquiry to Joh. Kaffe

### Inquiry sent from me to Joh. Kaffe, 23 November 2022:

‘(..) I would like insight into the following:

- An overview of all actors in your value chain of coffee between Brazil and Norway, as well as how much you import from each of your Brazilian suppliers.
- An overview of the actual adverse impacts as well as significant risk of adverse impacts that Joh. Kaffe has uncovered through its HRDD in your Brazilian value chain
- Information on the measures Norgesgruppen has implemented or plan to implement to cease adverse impacts and/or mitigate significant risk of adverse impacts, as well as the results or expected results of these measures.

E.g., it has been revealed forced labor on farms linked to Cooxupé, one of Joh. Kaffe’s suppliers, so please also provide insight into your work with Cooxupé in particular. (..)’

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### Response received from Joh. Kaffe, 6 December 2022:

‘(..) In our HRDD, coffee is identified as a product of risk. As you probably know, coffee is produced by millions of farmers all over the world, and much of the turnover takes place on so-called commodity exchanges. Consequently, we have assessed that the combination of certification, projects, direct trade and purchasing practices as important measures for us. Certifications alone cannot guarantee workers’ rights, but we believe that certification within the coffee sector is a good tool.

We buy from four supplier in Brazil, and we only purchase certified coffee. The Rainforest Alliance certification is used on coffee from Brazil. <https://www.rainforest-alliance.org/wp-content/uploads/2022/09/Protecting-Workers-Farmers-and-Foresters.pdf>.

In addition, all our suppliers are members of CeCafé (Brazilian Coffee Exporters Council), where climate and labor rights are important focus areas. All suppliers have signed Joh. Kaffe’s Code of Conduct. We would also like to mention our projects with International

Coffee Partners and Coffee and Climate. You can read more about our measures here:  
<https://johjohannsonkaffe.no/ansvarlig-handel/>.

Brazil has higher wages and stricter social and environmental requirements than most other coffee producing countries. According to ILAB (US Department of Labor), Brazil is nevertheless the only major coffee producing country where forced labor may occur during production.

Regarding your question about Cooxupé, we thank you for this information and will take it up with the supplier. We believe that Cooxupé takes its social responsibility towards its members, but we naturally take notifications about unwanted practices seriously. Cooxupé is the largest private coffee cooperative in the world with 12 000 members. 97 per cent of their members are small-scale farmers. For these members, coffee production generates most of their annual income, making stable prices even more important to their continued livelihood. In the districts where the cooperative works, they have developed health and scholarship programs and provided education and agricultural training. In these trainings, they focus on the younger generations of coffee farmers and on building sustainable farming systems. An extremely successful program of theirs, called Escola Consciente, won the Andef Award in 2014. The Andef Award is considered one of the most important awards in Brazilian agriculture. Cooxupé continues to use its size to make a difference. In 2013, they launched the Environmental Education Center to help reduce the impact of agriculture by encouraging future generations of farmers to become even more environmentally conscious. There will still always be a risk of unwanted practice, so we will take this further and ask for a follow-up plan. The last breach by one of the members of Cooxupé that we have recorded is from 2021. 19 workers had been deprived of wages on a farm owned by a member of the family of the president of Cooxupé. The farm was suspended from the license of RFA. The workers received compensation and, as we have interpreted it, the matter has been sorted out.

We believe that our work with certification schemes, International Coffee Partners, Coffee and Climate, and not least our long-term relationships with suppliers reduce the risk of something unwanted happening. (..)

## Appendix C: Overview of informants in Brazil

\* Online interview

<b>GIVEN NAME</b>	<b>ROLE</b>	<b>WHEN</b>	<b>HOW</b>
<b>Farmer 1 - Cooxupé</b>	Small-scale farmer cooperated in Cooxupé	Feb 2023	Individual and group interview
<b>Farmer 2 - Cooxupé</b>	Large-scale farmer cooperated in Cooxupé	Feb 2023	Group interview
<b>Farmer 3 - ECOM</b>	Large-scale farmer supplying coffee to ECOM	Feb 2023	Group interview
<b>Technical Assistant 1 - Cooxupé</b>	Agronomist working for Cooxupé, direct contact with cooperated farmers	Feb 2023	Individual and group interview
<b>Technical Assistant 2 - Cooxupé</b>	Agronomist working for Cooxupé, direct contact with cooperated farmers	Feb 2023	Individual and group interview
<b>Technical Assistant 1 - ECOM</b>	Agronomist working for ECOM, direct contact with farmers	Feb 2023	Group interview
<b>Technical Assistant 2 - ECOM</b>	Agronomist working for ECOM, direct contact with farmers	Feb 2023	Group interview
<b>Manager of technical assistants - Cooxupé</b>	Coordinating and managing the technical assistants in Cooxupé	Feb 2023	Individual interview
<b>Quality manager - Cooxupé</b>	Responsible for quality of coffee (taste, type, etc.)	Feb 2023	Individual interview
<b>Traceability manager - Cooxupé</b>	Responsible for the implementation of traceability mechanisms	Feb 2023	Individual interview

<b>Sustainability manager - Cooxupé</b>	Overarching responsibility for implementation of sustainability measures in Cooxupé	Feb 2023	Individual and group interview
<b>Trader - Cooxupé</b>	Trader and main point of contact between Joh. Kaffe and Cooxupé	Feb 2023	Individual and group interview
<b>Quality manager - ECOM</b>	Responsible for coffee quality (taste, type, etc.)	Feb 2023	Individual interview
<b>Sustainability manager - ECOM</b>	Overarching responsibility for implementation of sustainability measures in ECOM	Feb 2023	Individual interview*
<b>Trader - ECOM</b>	Trader and main point of contact between Joh. Kaffe and ECOM	Feb 2023	Individual interview*
<b>Coffee expert</b>	Researcher and previously working for international coffee company	Feb 2023	Individual interview
<b>National Coffee Council</b>	Representing Brazil's National Coffee Council	Feb 2023	Individual interview*
<b>Journalist</b>	Investigative journalist in Brazilian journal	Feb 2023	Individual interview
<b>Trade Union 1</b>	Representing a local trade union in Minas Gerais	Feb 2023	Individual interview
<b>Trade Union 2</b>	Representing a local trade union in Minas Gerais	Feb 2023	Group interview
<b>ADERE-MG 1</b>	Representing the Brazilian CSO ADERE-MG for the last 12 years	Feb 2023	Individual interview* and group interview
<b>ADERE-MG 2</b>	Representing the Brazilian CSO ADERE-MG for two years	Feb 2023	Group interviews

<b>ADERE-MG 3</b>	Representing the Brazilian CSO ADERE-MG for two years	Feb 2023	Group interviews
<b>Worker 1</b>	Seasonal wage worker (only during harvest)	Feb 2023	Group interview
<b>Worker 2</b>	Permanent wage worker on large-scale coffee farm	Feb 2023	Group interview
<b>Rainforest Alliance Brazil</b>	Representing RFA Brazil	March 2023	E-mail correspondence

## Appendix D: Interview guide in Brazil

The overarching topic of all interviews conducted has been human rights and corporate responsibility in the GVC of coffee between Brazil and Norway. All interviews have been semi-structured and open-ended, and all questions tailored to the specific people interviewed depending on their role and the context of the interview. As such, both the approach to the topic as well as the specific questions have differed in each interview situation. Below follows an overview of the main topics covered.

- Introduction of myself and my research project, as well as the reason why I wish to talk to the specific interviewee(s)
- Introduction of the interviewee(s) and their relationship to the Brazilian coffee industry
- Sustainability challenges and opportunities in the Brazilian coffee industry
- Human rights in the Brazilian coffee industry
- Corporate responsibility for human rights in Brazilian coffee production
  - What is being done?
  - Who is responsible, and for what?
  - What is challenging with regards to human rights in Brazilian coffee production?
- Perception of responsibility of companies ‘merely’ purchasing coffee from Brazilian suppliers