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## FROM BITTER TO BETTER: A COLLECTIVE EFFORT TO IMPROVE WORKERS' RIGHTS IN THE COFFEE INDUSTRY

DR. YING CHEN \*

### ABSTRACT

Coffee has become a staple in our everyday life. We reach for our coffee machine or French press in the morning before turning our minds to work or school. We crave that caffeine hit to kick-start the morning and have a productive day. However, while we enjoy our coffee, very few of us think about where our coffee comes from and under what conditions the beans are produced. Nowadays, coffee production is still closely linked to child labor, forced labor, poor working conditions, unfair wages, and many other forms of human rights violations. These issues have attracted some media attention. However, they have not generated much academic interest among scholars. Existing literature often focuses on a single issue, such as child labor, or they favor a single-solution approach, such as fair trade. This Article acknowledges that the existing literature has provided great insight into individual labor issues in the coffee industry. However, piecemeal approaches often struggle to bring about rapid improvement and they lead to suboptimal results. This Article aims to provide a holistic approach to improve global labor practices in the coffee industry. It argues that no individual or individual organization can solve labor issues in the global supply chains on its own. Rather, a collective effort across

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both the public and private sectors is required in order to bring coffee workers out of the shadows. Hopefully, we, the world together, can end the shameful history of human rights violations in the coffee industry.

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## I. INTRODUCTION

*"Without my morning coffee I'm just like a dried up piece of roast goat."*<sup>1</sup>

- Johann Sebastian Bach (German composer and musician of the Baroque period)

*"I would rather suffer with coffee than be senseless."*<sup>2</sup>

- Napoléon Bonaparte (French military general, the first emperor of France, and one of the world's greatest military leaders)

*"The powers of a man's mind are directly proportional to the quantity of coffee he drank."*<sup>3</sup>

- Sir James MacKintosh (Scottish jurist, politician and historian)

They say great minds think alike. Many of us share the same sentiments as these great minds. Coffee has become a staple in our everyday life. We reach for our coffee machine or French press in the morning before turning our minds to work or school. We crave that caffeine hit to kick start the morning and have a productive day. However, while we enjoy our coffee, very few of us think about where our coffee comes from and under what conditions the beans are produced. The sad truth is that there is a shameful history of human rights violations embedded within the coffee industry and this history continues to be written. Nowadays, coffee production is still closely linked to child labor, forced labor, poor working conditions, unfair wages, and many other forms of human rights violations.

These issues have attracted some media attention. However, they have not generated much academic interest among scholars.

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<sup>1</sup> Jen Greenholt, *Rethinking the Daily Grind* (Aug. 9, 2013), <https://members.classicalconversations.com/article/rethinking-daily-grind> [<https://perma.cc/7W6P-223X>]; see also MORTON SATIN, *COFFEE TALK: THE STIMULATING STORY OF THE WORLD'S MOST POPULAR BREW* 128 (2011) (noting that the famous German composer Johann Sebastian Bach was a notable coffee lover, and he even wrote a short opera about coffee obsession).

<sup>2</sup> Stephanie Bastek, *Trouble Brewing*, AM. SCHOLAR (May 8, 2020), <https://theamericanscholar.org/trouble-brewing/> [<https://perma.cc/JQW6-8M28>].

<sup>3</sup> SATIN, *supra* note 1, at 233.

Having reviewed the existing literature, there are only a few scholarly articles that have been written on this subject, for example, Diana Kruger's *Coffee Production Effects on Child Labor and Schooling in Rural Brazil*,<sup>4</sup> and Caroline Thompson's *Ethical Consumerism as A Human Rights Enforcement Mechanism: The Coffee Cultivation Model*.<sup>5</sup> These and the few other articles on the subject often focus on a single issue, such as child labor, or they favor a single-solution approach, such as fair trade. This Article acknowledges that these articles have provided great insight into individual labor issues in the coffee industry. However, piecemeal approaches often struggle to bring about rapid improvement and they lead to suboptimal results. It is important to take a broader look at labor issues in the coffee industry.

This Article aims to provide a holistic approach to improve global labor practices in the coffee industry. It argues that no individual or individual organization can solve labor issues in the global supply chains on its own. Rather, a collective effort across both the public and private sectors is required in order to bring coffee workers out of the shadows. Hopefully, we, the world together, can end the shameful history of human rights violations in the coffee industry.

## II. THE VIOLATIONS OF WORKERS' RIGHTS IN THE COFFEE INDUSTRY

### *a. Abusive Labor Practices in the Coffee Industry and the Reasons Behind Them*

The common perception is child labor, forced labor, hazardous and degrading working conditions, low wages, and other forms of abusive labor practices occur in sweatshops and other production plants that produce consumer goods. However, the abuse and exploitation of workers takes place more frequently in the agricultural industry. Child labor in agriculture is a widespread

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<sup>4</sup> Diana I. Kruger, *Coffee Production Effects on Child Labor and Schooling in Rural Brazil*, 82 J. DEV. ECON. 448, 448-63 (2007).

<sup>5</sup> Caroline Thompson, *Ethical Consumerism as a Human Rights Enforcement Mechanism: The Coffee Cultivation Model*, 24 TRANSNAT'L L. & CONTEMP. PROBS. 161, 161-92 (2014).

problem in many parts of the world. Shima Baradaran and Stephanie Barclay's article, *Fair Trade and Child Labor*, shows, "[o]ne third of the worldwide agriculture workforce is made up of child laborers."<sup>6</sup> A study conducted by the International Labor Organization ("ILO") also indicates, "60 percent of child laborers aged five to seventeen work in agriculture, compared to twenty-six percent in services and seven percent in industry."<sup>7</sup> In addition, agriculture workers are also exposed to a variety of risks in agriculture, such as long working hours in extreme weather, exposure to toxic agrochemicals, and injury from farm equipment and other dangerous tools.<sup>8</sup>

The coffee industry is no exception. Sadly, it is one of the worst in the agricultural sector. There are many reasons why labor issues remain a major challenge for the coffee industry. Generally, poverty is the most common contributing factor to abusive labor practices.<sup>9</sup> This is an unfortunate reality across all industries. Labor abuse and exploitation is often driven by poverty and limited job options.<sup>10</sup> Often workers have no choice but to accept any job offer they can get, on the basis that some money is better than no money and "any

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<sup>6</sup> Shima Baradaran & Stephanie Barclay, *Fair Trade and Child Labor*, 43 COLUM. HUM. RTS. L. REV. 1, 10 (2011).

<sup>7</sup> *Id.*

<sup>8</sup> Julie Hjerl Hansen, *Bitter Kaffe*, DANWATCH (Mar. 2, 2016), <https://old.danwatch.dk/en/undersogelse/bitter-kaffe/> [<https://perma.cc/EFQ4-6EKG>].

<sup>9</sup> Roger Plant, Head, Special Action Programme to Combat Forced Labour, *Forced Labour, Slavery and Poverty Reduction: Challenges for Development Agencies*, Presentation to the UK High-Level Conference to Examine the Links between Poverty, Slavery and Social Exclusion, at 5 (Oct. 30, 2007), [http://oit.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/statement/wcms\\_096992.pdf](http://oit.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/statement/wcms_096992.pdf) [<https://perma.cc/98NH-WPAP>].

<sup>10</sup> GENEVIEVE LEBARON NEIL HOWARD, CAMERON THIBOS & PENELOPE KYRITSIS, *CONFRONTING ROOT CAUSES: FORCED LABOUR IN GLOBAL SUPPLY CHAINS* 7 (2018), <https://core.ac.uk/download/pdf/145637779.pdf> (noting that poverty contributes to "creating a pool of workers vulnerable to exploitation"); see also Aleksandar Šarović, *Full Employment is a Turning Point for Capitalism, Unemployment Creates Exploitation of Workers*, COUNTERCURRENTS.ORG (Oct. 26, 2019), <https://countercurrents.org/2019/10/full-employment-is-a-turning-point-for-capitalism-unemployment-creates-exploitation-of-workers/> ("[U]nemployed workers have to accept poorly paid jobs to be able to feed their families. A higher unemployment rate produces cheaper labor.").

job is better than no job.”<sup>11</sup> Essentially, the employer holds all the cards. Nevertheless, as compared to other industries, workers in the coffee industry are even more vulnerable to abuse and exploitation, resulting from the combination of a number of factors: the nature of coffee production, the limited resources to improve labor practices, as well as the heavy reliance on coffee revenues in many coffee producing countries.

First of all, high quality coffee “requires excellence at every stage of the supply chain,” and “only coffee beans from the ripest of cherries should make it into the final product.”<sup>12</sup> Technological advances have made mechanized harvesting possible. Brazil has been particularly successful in using machinery for coffee harvesting thanks to its flat landscape and large fields.<sup>13</sup> However, in most coffee producing countries, cherries are generally handpicked.<sup>14</sup> In particular, gourmet coffee can only be harvested manually for quality control.<sup>15</sup> Coffee harvesting is particularly labor-intensive.<sup>16</sup> Today, the coffee industry employs over twenty-five million farmers and farm workers worldwide.<sup>17</sup>

Secondly, coffee is mainly produced by developing countries in the Global South.<sup>18</sup> As indicated in Natasha Dhillon-Penner’s

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<sup>11</sup> Marina Lopes, *The Hidden Suffering Behind the Brazilian Coffee that Jump-Starts American Mornings*, WASH. POST (Aug. 31, 2018), [https://www.washingtonpost.com/world/the\\_americas/the-hidden-suffering-behind-the-brazilian-coffee-that-jump-starts-american-mornings/2018/08/30/e5e5a59a-8ad4-11e8-9d59-dccc2c0cabcf\\_story.html?noredirect=on](https://www.washingtonpost.com/world/the_americas/the-hidden-suffering-behind-the-brazilian-coffee-that-jump-starts-american-mornings/2018/08/30/e5e5a59a-8ad4-11e8-9d59-dccc2c0cabcf_story.html?noredirect=on) [https://perma.cc/G8U6-UHAS]. Lopes notes, “[w]hile many are calling for stricter labor oversight, some migrants in Brazil’s desolate northeast believe that any job is better than no job.” Further, she points out Joana Soares, a woman rescued from a coffee plantation in 2015, who goes back to the coffee fields every year despite being treated like a slave.

<sup>12</sup> *Hand-picked vs Mechanized Coffee: The Pros and Cons*, PERFECT DAILY GRIND (July 6, 2017) <https://www.perfectdailygrind.com/2017/07/hand-picked-vs-mechanized-coffee-pros-cons/> [https://perma.cc/B6VX-9W6T].

<sup>13</sup> *Id.*

<sup>14</sup> Thompson, *supra* note 5, at 164.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Kelly Watson & Moira Laura Achinelli, *Context and Contingency: The Coffee Crisis for Conventional Small-Scale Coffee Farmers in Brazil*, 174 GEOGRAPHICAL J. 223, 223 (2008).

<sup>18</sup> Verena Bitzer, Mara Francken & Pieter Glasbergen, *Intersectoral Partnerships for a Sustainable Coffee Chain: Really Addressing Sustainability or Just Picking (Coffee) Cherries?* 18 GLOB. ENV’T CHANGE 271, 271 n.3 (2008).



research, “[s]mall-scale family farms in eighty-five Latin American, Asian, and African countries produce over seventy-five percent of the world’s coffee.”<sup>19</sup> Brazil is the world’s largest coffee exporter,<sup>20</sup> followed by Vietnam,<sup>21</sup> and Colombia.<sup>22</sup> Other main producers include Uganda, Ethiopia, Kenya, Costa Rica,<sup>23</sup> and Guatemala.<sup>24</sup> That means the twenty-five million coffee farmers and farm workers mentioned above are mostly employed in these countries, and they make their living growing coffee. However, these countries, with developing economies, often have limited resources to protect labor rights. Sometimes, the complexity of local dilemmas and politics, such as local protectionism, corruption, and poor governance also constrains developing countries from complying with labor standards.<sup>25</sup>

Even worse, for countries that rely heavily on coffee as a major cash crop, any disruption to coffee production such as extreme weather conditions, or any changes in global markets such as price fluctuations, could mean economic devastation for them.<sup>26</sup> Colleen Haight’s research indicates, “[f]or many of the world’s least developed countries, such as Honduras, Ethiopia, and Guatemala, coffee exports make up an enormous share of the export earnings,

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<sup>19</sup> Natasha Dhillon-Penner, *Globalization, the WTO and Fair Trade: Is the International Trade System Working in the Interests of Coffee Farmers*, 9 *ASPER REV. INT’L BUS. & TRADE L.* 201, 203 (2009).

<sup>20</sup> Scott B. Weese, *International Coffee Regulation: A Comparison of the International Coffee Organization and the Fair Trade Coffee Regimes*, 7 *CARDOZO PUB. L. POL’Y & ETHICS J.* 275, 281 (2008).

<sup>21</sup> Thompson, *supra* note 5, at n. 41.

<sup>22</sup> Dominique Barjolle, Xiomara F. Quiñones-Ruiz, Monique Bagal, Hermann Comoé, *The Role of the State for Geographical Indications of Coffee: Case Studies from Colombia and Kenya*, 98 *WORLD DEV.* 105, 107 (2017) (noting that “Colombia is the third important” [sic] coffee producing country in the world).

<sup>23</sup> See Dhillon-Penner, *supra* note 19, at 202-203 (“There are two primary varieties of coffee: arabicas and robustas. Arabica beans . . . grow at higher altitudes, feature a milder flavour, and have traditionally been cultivated in Latin America, Ethiopia, and Kenya. Robusta beans are hardier, with a stronger flavour, and are largely produced by Brazil, Vietnam, and Uganda.”).

<sup>24</sup> See APRIL LINTON, *FAIR TRADE FROM THE GROUND UP: NEW MARKETS FOR SOCIAL JUSTICE* 37 (2012) (“Guatemala is the world’s eighth-largest coffee exporting country.”).

<sup>25</sup> Mahmood Monshipouri, *Promoting Universal Human Rights: Dilemmas of Integrating Developing Countries*, 4 *YALE HUM. RTS. & DEV. L.J.* 25, 28, 31, 50-51 (2001).

<sup>26</sup> See Dhillon-Penner, *supra* note 19, at 202 (noting that coffee trade is one of major sources of foreign exchange earnings for many producing countries).

comprising in some cases more than 50 percent of foreign exchange earnings.”<sup>27</sup> Under such circumstances, these countries and their people inevitably depend on coffee production and export.<sup>28</sup> Weather conditions and global market prices are often unpredictable and beyond the control of coffee producers. However, what can be controlled is the cost of labor, particularly when labor represents the largest cost of coffee production. The pressure to improve international competitiveness has often driven the plantations to lower the cost of production through abusing and exploiting their workers. Meanwhile, the importance of coffee revenue has also made some governments turn a blind eye to labor issues.

*b. Case Study: Brazil*

This Article uses Brazil as an example to introduce labor issues in the coffee industry. Generalizing from a single country may have its limitations. However, Brazil’s case is fairly representative. First of all, it is the world’s largest coffee exporter, accounting for one-third of the world’s beans.<sup>29</sup> Although Brazil has been quite successful in mechanizing coffee harvesting, like many other coffee producing countries, it still relies heavily on farm workers to handpick coffee cherries and do other work on the plantations.<sup>30</sup> Secondly, despite sustained economic growth, Brazil remains a developing country due to its low GDP per capita,<sup>31</sup> low living standards,<sup>32</sup> and other factors. It is true Brazil’s economy is more dynamic than many other coffee producing countries and it is not entirely dependent on coffee revenues. However, coffee remains one of the most important agribusiness commodities for the

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<sup>27</sup> Colleen Haight, *The Problem with Fair Trade Coffee*, 2011 STAN. SOC. INNOVATION REV. 74, 76.

<sup>28</sup> See Dhillon-Penner, *supra* note 19, at 202.

<sup>29</sup> Lopes, *supra* note 11.

<sup>30</sup> Thompson, *supra* note 5, at 164.

<sup>31</sup> John H. Coatsworth, *Why is Brazil "Underdeveloped" and What Can Be Done About It? Overcoming Social Inequity*, REVISTA HARV. REV. LAT. AM., 2007, at 7, 7-8.

<sup>32</sup> Pamela Surkan, *Health Inequalities in Brazil: Observations from the Field*, REVISTA HARV. REV. LAT. AM., 2007, at 15, 15 (noting that in the northern region, many people live in extreme poverty).

country.<sup>33</sup> Thirdly, although Brazil's human rights problems may not be as severe as other coffee producing countries—and the Brazilian government has made considerable efforts to tackle these problems<sup>34</sup>—violations of labor rights remain a problem unresolved, especially in the coffee industry. It is fair to say that Brazil shares many similarities with other coffee producing countries. We can safely draw some general inferences that relate to the coffee industry from the case study of Brazil.

Coffee originated in tropical Africa and spread to Latin America and other parts of the world through colonization.<sup>35</sup> It was first introduced to Brazil in the 1700s.<sup>36</sup> Before Brazil made slavery illegal in 1888, the country's coffee plantations relied on black slave labor.<sup>37</sup> In the 19<sup>th</sup> century alone, more than 1.5 million African slaves were brought to Brazil working on the coffee plantations.<sup>38</sup> They worked and lived in horrific conditions.<sup>39</sup> They were treated as dispensable private property.<sup>40</sup> For plantation owners, it was easier to import new slaves than to treat the existing ones with compassion.<sup>41</sup>

Today, Brazil has made considerable efforts to tackle labor issues, and it "has been a pioneer in the global fight to eradicate slave labor since 2003."<sup>42</sup> The situation has been improving, but labor abuse and exploitation remains a persistent problem across Brazil's lucrative coffee industry.<sup>43</sup> Coffee plantations still depend

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<sup>33</sup> Bruno Volsi, Tiago Santos Telles, Carlos Eduardo Caldarelli, Marcia Regina Gabardo da Camara, *The Dynamics of Coffee Production in Brazil*, PLOS ONE, JULY 23, 2019, AT 1 ("Coffee is a crop of significant importance for Brazilian agr[i]business.").

<sup>34</sup> Lopes, *supra* note 11.

<sup>35</sup> See generally ANTONY WILD, COFFEE: A DARK HISTORY (2005) (exploring the complex history of coffee production and consumption).

<sup>36</sup> *Slavery & Specialty: Discussing Coffee's Black History*, PERFECT DAILY GRIND (Mar. 17, 2019), <https://www.perfectdailygrind.com/2019/03/from-slavery-to-specialty-coffees-black-history-colonialism/> [<https://perma.cc/27CQ-VTFY>].

<sup>37</sup> *Id.*

<sup>38</sup> Lopes, *supra* note 11.

<sup>39</sup> *Slavery & Specialty: Discussing Coffee's Black History*, *supra* note 36.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Lopes, *supra* note 11.

<sup>43</sup> Kate Hodal, *Nestlé Admits Slave Labour Risk on Brazil Coffee Plantations*, GUARDIAN (Mar. 2, 2016 4:15 PM), <https://www.theguardian.com/global->

heavily on cheap labor, and the industry booms at great human cost.<sup>44</sup> While Brazilian coffee workers are no longer held as private property, some workers are still treated as tools; their working conditions are brutal.<sup>45</sup> Extremely low wages and high recruitment fees are shocking, but not surprising.

Danwatch, an independent Danish media and research center, conducted a thorough investigation into Brazil's coffee industry. Through "speaking to farmers, experts and trade unions, inspecting plantations with Brazilian authorities, and tracing beans through a complicated supply chain from plantation to middleman to world market,"<sup>46</sup> Danwatch confirms that "Brazil's coffee industry has serious problems with working conditions that are analogous to slavery, life-threatening pesticides and scarce protective equipment."<sup>47</sup>

The journey to become a coffee worker begins with a beautiful hope for a better life. Workers board the bus to the coffee plantations expecting that they will earn an income to support themselves and their family. However, the moment they arrive at the plantations and, in some cases, the moment they board the bus, the bubble bursts. Abelar Rebouças, one of the enslaved workers rescued by the police in southern Brazil, has said his work at the coffee plantation was like "[y]ou go there seeking a living wage and can end up in a coffin."<sup>48</sup> Marina Lopes, a Washington Post correspondent based in Brazil, also observed, "most [coffee] laborers come from impoverished Bahia state in Brazil, and they are often lured to the plantations with fake promises of high wages and decent working conditions."<sup>49</sup> In reality, through retention of

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development/2016/mar/02/nestle-admits-slave-labour-risk-on-brazil-coffee-plantations [https://perma.cc/9Y3Z-AWNN].

<sup>44</sup> Lopes, *supra* note 11.

<sup>45</sup> *Id.*

<sup>46</sup> Hodal, *supra* note 43.

<sup>47</sup> Hansen, *supra* note 8.

<sup>48</sup> Lopes, *supra* note 11.

<sup>49</sup> *Id.*

identity documents,<sup>50</sup> debt bondage,<sup>51</sup> and threat of use of violence,<sup>52</sup> many coffee plantations constrain workers' freedom and force them to work long hours with little or even no pay.<sup>53</sup>

Coffee workers also suffer from appalling working conditions. Coffee workers rarely have access to sanitary drinking water, toilet facilities, or shelters in the field, and they also face other safety and health risks.<sup>54</sup> In Brazil, it is lawful to spray coffee bushes with pesticides that can cause acute illnesses and are potentially deadly.<sup>55</sup> According to Danwatch, "[s]ome of the pesticides are so toxic that merely getting them on your skin can kill you."<sup>56</sup> However, many workers are not "provided free protective equipment for handling and applying agrochemicals as required by law, or they [are] offered such equipment for purchase on credit."<sup>57</sup> Serious workplace injuries occur frequently.<sup>58</sup>

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<sup>50</sup> *This Is What Modern Slavery Looks Like*, CATH. RELIEF SERVS.: COFFEELANDS BLOG (Dec. 14, 2015), <https://coffeelands.crs.org/2015/12/this-is-what-modern-slavery-looks-like/> [<https://perma.cc/97ZQ-TSVP>] ("Upon arrival, workers surrendered their identity documents to farm owners, ostensibly for safe keeping and to formally register them with the Ministry of Labor, although rescued workers were rarely registered. Without their identity cards, of course, workers who decided they had been through enough were not free to get up and go.").

<sup>51</sup> *Id.* From the moment workers are contracted, they begin piling up debt, including, for example, "[t]ransport from their communities of origin to the farm, the purchase of protective equipment, rent for miserable lodging, food and supplies at company stores on the farm – these and more are all given to workers on credit, on terms that are rarely made clear." *Id.* However, "[w]orkers often have no idea they are in debt until they try to leave and are informed they aren't free to go until they settle their accounts, which means working longer than they planned and consuming less than they need. Even when workers manage to pay off their debts, these expenses can leave them with few earnings at the end of a season." *Id.*

<sup>52</sup> *Id.* ("In some cases, work was supervised by armed monitors, creating the menace of threat for workers who sought to leave. In other cases, workers reported physical abuse.").

<sup>53</sup> *Id.*

<sup>54</sup> Baradaran & Barclay, *supra* note 6, at 11.

<sup>55</sup> Hansen, *supra* note 8.

<sup>56</sup> *Id.*

<sup>57</sup> *This is What Modern Slavery Looks Like*, *supra* note 50.

<sup>58</sup> Julie Hjerl Hansen, *You May be Drinking Coffee Grown under Slavery-Like, Life-Threatening Conditions*, DANWATCH (Mar 10, 2016), <https://old.danwatch.dk/en/nyhed/du-risikerer-at-drikke-kaffe-dyrket-under-slavelignende-forhold/> [<https://perma.cc/VN8C-U9LA>].

Moreover, in most cases, coffee workers do not have an employment contract, and they have limited legal protection.<sup>59</sup> Child labor also remains a problem on Brazilian coffee plantations. According to Danwatch, “in Minas Gerais, Brazil’s largest coffee-producing state, 116,000 children aged 5-17 years old worked in agriculture in 2013.”<sup>60</sup> More than half of these children were under fourteen years old.<sup>61</sup>

These labor issues contravene both Brazilian law and international treaties Brazil has signed and ratified.<sup>62</sup> Over the last few years, Brazilian authorities have raided many coffee plantations and factories, rescuing hundreds of workers from slavery-like working conditions.<sup>63</sup> For example, in 2016, the Brazilian government rescued more than 800 enslaved coffee workers.<sup>64</sup> Beginning in 2003, Brazil expanded raids, increased fines and began publishing a “blacklist” of businesses using slave labor.<sup>65</sup> Unfortunately, in reality there are only a small number of workers that the authorities are able to reach and rescue. Limited resources constrain the Brazilian government from reaching out to all enslaved or exploited coffee workers.<sup>66</sup> Although the authorities frequently rescue workers on the plantations, companies are unable to provide information on the scale of modern slavery occurring in the coffee industry.<sup>67</sup>

Labor issues in the coffee industry are not exclusive to Brazil; they are also very common in other coffee producing areas, for example, Guatemala and Sub-Saharan Africa. Thompson documented modern slavery in Guatemala’s coffee industry in her research *Ethical Consumerism as a Human Rights Enforcement*

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<sup>59</sup> *Id.*

<sup>60</sup> Hansen, *supra* note 8.

<sup>61</sup> *Id.*

<sup>62</sup> *See id.*

<sup>63</sup> *See* Hodal, *supra* note 43.

<sup>64</sup> Lopes, *supra* note 11.

<sup>65</sup> *Id.*

<sup>66</sup> Hodal, *supra* note 43 (“The authorities only have the resources to reach out to about half the workers who complain about slavery-like conditions, so that means of all the people who escape, and are able to file a complaint with the ministry of labour, still only half will be helped.”).

<sup>67</sup> *See id.* (noting that since coffee companies themselves cannot rule out slavery-like conditions in the supply chain, the problem could be larger than what is documented).

*Mechanism: The Coffee Cultivation Model*.<sup>68</sup> Her research reveals that physical confinement in the work location, induced indebtedness, retention of identity documents, child labor, deprivation of food and shelter, health and safety issues, and other labor issues occur in Guatemala's coffee industry.<sup>69</sup> Similarly, Verité's research,<sup>70</sup> a project funded by a grant from the United States Department of State, also detailed the abuse and exploitation of coffee workers in Africa, including, for example, forced child labor in Côte d'Ivoire and Togo, as well as discrimination and harassment of female workers on Kenyan coffee plantations.<sup>71</sup>

### III. EXISTING LABOR PROTECTION MECHANISMS AND PROBLEMS IN THE COFFEE INDUSTRY AND THE PROBLEMS

The discussion above suggests that, to date, the human rights crisis in the coffee industry has not been effectively "remedied by international human rights [protection] mechanisms, nor by worker's domestic legislation."<sup>72</sup> Otherwise, there would have been less labor abuse or exploitation in Brazil and beyond. To improve global labor practices, it is important to evaluate the existing protection mechanisms at both the international and national levels, and to identify the lapses and failures in the system. At the international level, this Article examines the labor protection mechanisms under the International Labour Organization ("ILO"), the United Nations ("UN"), the World Trade Organization ("WTO"), and the International Coffee Organization ("ICO"), respectively. At the national level, this Article primarily investigates Brazil's domestic law in the area of labor rights protection.

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<sup>68</sup> See Thompson, *supra* note 5, at 170.

<sup>69</sup> *Id.*

<sup>70</sup> VERITÉ, TRAFFICKING RISK IN SUB-SAHARAN AFRICAN SUPPLY CHAINS 7-10, <https://www.verite.org/wp-content/uploads/2018/01/SSA-Verite-Commodity-Report-Coffee.pdf> [<https://perma.cc/5L6H-DFVD>].

<sup>71</sup> *Id.*

<sup>72</sup> Thompson, *supra* note 5, at 177.

*a. International Mechanisms for Labor Protection*

*i. The International Labour Organization and the United Nations*

Prominent international bodies such as the ILO and the UN have promulgated many treaty instruments to address the issues surrounding labor rights. The ILO, as the world's most important international organization promoting rights at work, provides international protection against labor abuse and exploitation. As the first specialized agency of the UN, the ILO "brings together governments, employers and workers of 187 member States, to set labor standards, develop policies and devise programmes promoting decent work for all women and men."<sup>73</sup> Eight fundamental conventions have been adopted by the ILO to cover the most important workers' rights. They are the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), the Right to Organise and Collective Bargaining Convention 1949 (No. 98), the Forced Labour Convention 1930 (No. 29) (and its 2014 Protocol), the Abolition of Forced Labour Convention 1957 (No. 105), the Minimum Age Convention 1973 (No. 138), the Worst Forms of Child Labour Convention 1999 (No. 182), the Equal Remuneration Convention 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention 1958 (No. 111).<sup>74</sup>

As for the UN, the Universal Declaration of Human Rights ("UDHR"),<sup>75</sup> the International Covenant on Economic, Social and Cultural Rights ("ICESCR"),<sup>76</sup> and the International Covenant on

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<sup>73</sup> *About the ILO*, INT'L LAB. ORG., <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> [<https://perma.cc/GVD7-M5DM>].

<sup>74</sup> *Conventions and Recommendations*, INT'L LAB. ORG., <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> [<https://perma.cc/9DUL-YPQ9>].

<sup>75</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

<sup>76</sup> Int'l Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].



Civil and Political Rights ("ICCPR"),<sup>77</sup> also endorse the ILO's protection of labor rights.<sup>78</sup> The UDHR explicitly addresses the right to minimum labor standards. It protects "the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."<sup>79</sup> It also guarantees that everyone has the right to equal pay for equal work,<sup>80</sup> "the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity,"<sup>81</sup> and "the right to a standard of living adequate for the health and well-being of himself and of his family."<sup>82</sup> Moreover, the right to form and join trade unions is also legalized to protect workers' interests.<sup>83</sup> Similarly, the ICESCR confirms minimum working conditions as a basic human right.<sup>84</sup> Under Article 7, it recognizes "the right of everyone to the enjoyment of just and favourable conditions of work,"<sup>85</sup> including, for example, fair wages, safe and healthy working conditions, equal opportunity for everyone, the right to rest, leisure and paid holiday.<sup>86</sup> Meanwhile, the ICCPR also confirms individuals have "the right to freedom of association with others, including the right to form and join trade unions."<sup>87</sup> Furthermore, given that migrant workers are more vulnerable to abuse and exploitation in the workplace, the UN promulgated the International Convention on the Protection of the Rights of All

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<sup>77</sup> Int'l Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S 171 [hereinafter ICCPR].

<sup>78</sup> Thompson, *supra* note 5, at 175-76 (listing other international human rights treaties that endorse the ILO's promotion of rights at work including, for example, the UN Convention on the Rights of the Child, the European Convention of Human Rights, European Social Charter, and the European Union Charter of Fundamental Rights).

<sup>79</sup> UDHR, *supra* note 75, art. 23(1).

<sup>80</sup> *Id.* art. 23 (2).

<sup>81</sup> *Id.* art. 23(3).

<sup>82</sup> *Id.* art. 25(1).

<sup>83</sup> *Id.* art. 23(4).

<sup>84</sup> ICESCR, *supra* note 76, art. 7.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> ICCPR, *supra* note 77, art. 22(1).

Migrant Workers and Members of Their Families (“CRMW”) to protect their rights.<sup>88</sup>

Prominent international bodies have set labor standards for their Member States to follow. These standards have been widely accepted by almost all countries in the world, at least on paper.<sup>89</sup> It is worth noting that the ILO is particularly successful in “developing and propagating guiding international labor standards.”<sup>90</sup> Nevertheless, despite these achievements, the world continues to face many problems that stand in the way of improving labor rights. Among them, a fundamental challenge is the lack of efficacy in the implementation of labor standards.<sup>91</sup>

The treaty instruments discussed above are mostly voluntary guidelines.<sup>92</sup> As such, the ILO may only issue advisory opinions to address the violations of labor rights in individual countries; they “[do] not have the strength of a legally binding judicial body to give effect to its standards.”<sup>93</sup> If a Member State fails to adhere to labor standards or refuses to comply with the advisory opinions delivered by the ILO or the UN bodies, there would be no meaningful legal consequences.

In practice, due to the lack of enforcement power, the ILO “relies on strong moral suasion to encourage nations to comply with the established guidelines.”<sup>94</sup> It “cannot impose sanctions, force

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<sup>88</sup> G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1990).

<sup>89</sup> See *Member States*, UNITED NATIONS, <https://www.un.org/en/member-states/> [<https://perma.cc/2S3F-RFEC>] (noting that the UN has 193 Member States); see also *Member states*, INT’L LAB. ORG., <https://www.ilo.org/public/english/standards/relm/country.htm> [<https://perma.cc/7HZU-9CSF>] (noting that 186 of the 193 Member States of UN and the Cook Islands are members of the ILO).

<sup>90</sup> Thompson, *supra* note 5, at 175 (listing the examples of the ILO’s “formal success” including, for example, “the vast number of State’s ILO Convention ratifications; the Conventions’ success in establishing labor as a formally recognized area of human rights, and human rights bodies’ incorporation of, or reference to, the ILO’s core standards”).

<sup>91</sup> *Id.* at 190.

<sup>92</sup> See Joseph Langan, *Did Your Jeans Enslave Children? Child Labour in International Trade*, 2 ASPER REV. INT’L BUS. & TRADE L. 159, 162-64 (2002) (noting the contractual nature of international human rights treaties and the lack of judicial enforcement).

<sup>93</sup> Dhillon-Penner, *supra* note 19, at 216.

<sup>94</sup> *Id.*

countries to submit reports, or force Member States to adopt and implement humane labor legislation.”<sup>95</sup> Even worse, the ILO “does not even revoke a State’s membership after consistent violations.”<sup>96</sup> The very few “punishments” imposed on the non-compliant countries include, for example, public embarrassment, condemnation from the international community, and a possible campaign to boycott the products from these countries.<sup>97</sup> These ILO approaches are also shared by other UN bodies. Cassidy has observed, “[t]he enforcement of international human rights law has always been seen as the weak link in the international legal system.”<sup>98</sup> In a sense, the recognitions and guarantees of labor rights are nothing but evidence of what the international community aspires to be.

To combat labor issues, some scholars may propose that the world should strengthen the existing international human rights law framework and improve the efficiency of the enforcement mechanisms. This appears to be a plausible proposal, but works in principle only. In *Fair Trade and Child Labor*, Baradaran and Barclay have argued that “hardly any country is free from human rights abuses.”<sup>99</sup> This is indeed true. In practice, Member States often do not take explicit actions against non-compliant States so that they can avoid being accused of non-compliance by others.<sup>100</sup> From a diplomatic point of view, States also tend to avoid “jeopardiz[ing] or damag[ing] their relationships with other [States] or encourag[ing] retaliation on issues where they are noncompliant.”<sup>101</sup> Due to this inaction, it is unlikely that the international community will be able to change labor practices through the ILO or other UN

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<sup>95</sup> Thompson, *supra* note 5, at 175.

<sup>96</sup> *Id.*; see also Baradaran & Barclay, *supra* note 6, at 19-20 (“[D]espite ample evidence of child labor abuses by Malaysia and Burma, both of these countries remain members of the ILO.”).

<sup>97</sup> Lisa G. Baltazar, *Government Sanctions and Private Initiatives: Striking a New Balance for U.S. Enforcement of Internationally-Recognized Worker’s Rights*, 29 COLUM. HUM. RTS. L. REV. 687, 701, 721 (1998); see also Baradaran & Barclay, *supra* note 6, at 18-19, 26-28.

<sup>98</sup> Julie Cassidy, *Watchdog or Paper Tiger: The Enforcement of Human Rights in International Forums*, 10 UNIV. NOTRE DAME AUSTL. L. REV. 37, 37 (2008) (emphasis added).

<sup>99</sup> Baradaran & Barclay, *supra* note 6, at 18.

<sup>100</sup> *Id.* at 18-19.

<sup>101</sup> *Id.* at 19.

bodies in the near future, unless there is a strong motivation for States to interfere in one another's domestic affairs.

This Article argues that global competition for trade opportunities is a strong motivation that drives the change of labor practices. On the one hand, international trade is an important way to expand markets and create additional revenues and jobs that otherwise may not have been available domestically. On the other hand, countries with low labor standards often have lower production costs,<sup>102</sup> giving them an unfair advantage on the global market. As their export performance improves, countries with higher labor standards and higher labor costs may suffer a decline in trade.<sup>103</sup> Thus, trade interests drive many countries, particularly those with high labor standards and high labor costs, to push for standardized domestic labor protection in all exporting countries.

In the area of coffee trade, there exist two important intergovernmental organizations; they are the WTO and the ICO. The discussion below examines labor protection in these two important trade organizations, and identifies issues and potential solutions for future improvement.

*ii. The World Trade Organization*

Coffee is one of the most traded agricultural products in the world, and its scope is truly international.<sup>104</sup> As previously mentioned, coffee is mainly produced by the least-developed or developing countries in the Global South (hereinafter "coffee producing countries"), but primarily consumed by developed countries in the Global North (hereinafter "coffee consuming countries").<sup>105</sup> Latin America, as well as Vietnam, Uganda, Ethiopia, and Kenya, are the main coffee producers in the world.<sup>106</sup> Meanwhile, the United States is the largest single importer of

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<sup>102</sup> See Maria Artuso & Carolan McLarney, *A Race to the Top: Should Labour Standards be Included in Trade Agreements?*, 40 VIKALPA 1, 1 (2015) (India).

<sup>103</sup> *Id.*

<sup>104</sup> See Seth W. Shannon, Note, *Economic Stimulation: The History and Hope of Coffee in Development*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 169, 170 (2009).

<sup>105</sup> See Bitzer, Francken & Glasbergen, *supra* note 18, at 271; see also Dhillon-Penner, *supra* note 19, at 202.

<sup>106</sup> Dhillon-Penner, *supra* note 19, at 202-03.

coffee;<sup>107</sup> it “alone consumes 20 percent of the world’s coffee.”<sup>108</sup> The United States is followed by the European Union (“EU”) and Japan.<sup>109</sup> As such, one would think the WTO, the world’s most important trade organization, should have some regulation in place to prohibit its Member States from abusing and exploiting their workers, and prevent them from lowering labor standards to gain an unfair advantage in export.

Under the WTO framework, the members have generally agreed to respect core labor standards. At both the 1996 Singapore Ministerial Conference<sup>110</sup> and the 2001 Doha Round of negotiations,<sup>111</sup> the members confirmed that they are committed to the elimination of child labor and forced labor, the protection of freedom of association, and the promotion of non-discrimination at work.<sup>112</sup> Nevertheless, despite the confirmation of commitment to protect labor rights, labor standards are not included in the WTO agreements.<sup>113</sup> There is also no plan for the WTO’s Councils and Committees to work on this subject.<sup>114</sup> Instead, the WTO identifies the ILO as “the competent body to negotiate labour standards,”<sup>115</sup> and forgoes a *labor clause* in the WTO legal framework to enforce

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<sup>107</sup> Weese, *supra* note 20, at 281.

<sup>108</sup> Shannon, *supra* note 104, at 170.

<sup>109</sup> *Id.*

<sup>110</sup> See *Trade and Labour Standards: Subject of Intense Debate*, WORLD TRADE ORG. [hereinafter *Trade and Labour Standards*], [https://www.wto.org/english/thewto\\_e/minist\\_e/min99\\_e/english/about\\_e/18lab\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/18lab_e.htm) [<https://perma.cc/KN5T-VEEL>].

<sup>111</sup> See World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1 ¶ 8, [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm) [<https://perma.cc/JET9-9KCCQ>] (reaffirming the “declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards,” and noting the “work under way in the International Labour Organization (ILO) on the social dimension of globalization”).

<sup>112</sup> *Labour Standards: Consensus, Coherence and Controversy*, WORLD TRADE ORG. [hereinafter *Labour Standards*], [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm) [<https://perma.cc/W8BW-DQ8D>].

<sup>113</sup> *Trade and Labour Standards*, *supra* note 110; see also Farkhanda Zia Mansoor, *Trade Versus Peace: A Contextual Analysis of Core Labour Standards in the Global Trading Community*, 5 *ASPER REV. INT’L BUS. & TRADE L.* 133, 143-47 (2005).

<sup>114</sup> *Labour Standards*, *supra* note 112.

<sup>115</sup> *Id.*

core standards in its Member States.<sup>116</sup> In essence, the work has been entirely deferred to the ILO.<sup>117</sup>

Two issues have arisen with respect to this arrangement. First of all, the exclusion of labor standards in the WTO rules and the deferral of the work to the ILO indicate that WTO members lack a genuine consensus on how to improve labor practices. It also indicates that there is no legally binding mechanism under the WTO system to protect labor rights. In practice, the WTO is one of the most influential intergovernmental organizations that can make a positive change through imposing binding decisions on its members and requiring them to provide adequate protection to their workers. Unfortunately, it fails to address labor issues. Secondly, although the WTO confirms that the secretariats of the WTO and the ILO should “work together on technical issues under the banner of ‘coherence’ in global economic policy-making,”<sup>118</sup> the reality is “it is not easy for them to agree, and the question of international enforcement is a minefield.”<sup>119</sup>

Whether the WTO should incorporate labor standards into its legal framework has been a controversial issue since its birth in 1994.<sup>120</sup> Yet, it remains unresolved. Many developed countries propose to “bring labour standards within the umbrella of the WTO”<sup>121</sup> on the ground that the inclusion would “provide incentives for WTO member governments to improve conditions for workers around the world.”<sup>122</sup> On the contrary, most developing countries argue that labor issues have no place in the WTO; the inclusion is simply “a guise for protectionism in developed-country

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<sup>116</sup> *Trade and Labour Standards*, *supra* note 110 (noting that “[t]his proposal is among the most controversial currently before the WTO,” and “[s]ome WTO member governments in Europe and North America believe that the issue must be taken up by the WTO in some form if public confidence in the WTO and the global trading system is to be strengthened,” but “[m]ost developing countries and many developed nations believe the issue of core labour standards does not belong in the WTO”).

<sup>117</sup> See Dhillon-Penner, *supra* note 19, at 215 (“[W]hile there are more ILO members than WTO members, all of the WTO members are also members of ILO.”).

<sup>118</sup> *Trade and Labour Standards*, *supra* note 110.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Dhillon-Penner, *supra* note 19, at 215.

<sup>122</sup> *Trade and Labour Standards*, *supra* note 110.

markets,"<sup>123</sup> and it would ultimately reduce developing countries' competitive advantages.<sup>124</sup> Besides, some people also believe that "better working conditions and improved labour rights arise through economic growth."<sup>125</sup>

Despite the controversy, this Article supports the incorporation of labor clauses into the WTO legal framework. Trading with countries in which labor rights are poorly protected only encourages them to further "weaken existing labor law[s] in order to maintain competitiveness in international trade."<sup>126</sup> If the WTO incorporates legally binding commitments to protect labor rights, the incentives to abuse and exploit workers to gain an unfair advantage on the global market would be removed. Working conditions across the globe could be improved, international trading systems could be strengthened, and the public confidence in the WTO could be increased.<sup>127</sup>

Many international trade agreements have already included labor clauses to ensure the protection of labor rights in the exporting country.<sup>128</sup> The 1992 North American Free Trade Agreement ("NAFTA") signed between the United States, Canada, and Mexico was the first trade agreement that "really got 'any teeth in what another country had to do with its own workers and its own labor standards.'"<sup>129</sup> Since the inclusion of the labor clause in NAFTA in 1992, the number of labor clauses in international trade agreements have significantly increased.<sup>130</sup> According to research conducted by Céline Carrère, Marcelo Olarreaga, and Damian Raess, "34 percent of [trade agreements] signed in 1995 included [labor clauses], 42 percent in 2000, 50 percent in 2005, 70 percent in 2010 and 84 percent

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<sup>123</sup> *Id.*

<sup>124</sup> Dhillon-Penner, *supra* note 19, at 215.

<sup>125</sup> *Trade and Labour Standards*, *supra* note 110.

<sup>126</sup> Drusilla K. Brown, *Labor Standards: Where Do They Belong on the International Trade Agenda?*, 15 J. ECON. PERSPS. 89, 89 (2001).

<sup>127</sup> *See Trade and Labour Standards*, *supra* note 110.

<sup>128</sup> *See Céline Carrère, Marcelo Olarreaga & Damian Raess, Labor Clauses in Trade Agreements: Worker Protection or Protectionism?* CTR. FOR ECON. POL'Y RSCH. 2, 6-7 (2017), [https://www.wto.org/english/res\\_e/reser\\_e/gtdw\\_e/wkshop17\\_e/rass\\_e.pdf](https://www.wto.org/english/res_e/reser_e/gtdw_e/wkshop17_e/rass_e.pdf) [<https://perma.cc/4FNL-XR8X>].

<sup>129</sup> *Id.* at 6.

<sup>130</sup> *Id.* at 2, 6.

in 2014.”<sup>131</sup> The world has come to realize that labor protection is a trade-related issue, and it is important to root protection for labor rights in international trade. In response to the concern that the inclusion of labor clauses may result in protectionism in developed countries and hurt the export of developing countries, Carrère, Olarreaga, and Raess’s research has also confirmed that “the introduction of [labor clauses] has on average no impact on trade flows.”<sup>132</sup> In fact, “[t]he impact of [labor clauses] is statistically significant, large and positive on exports of low-income countries towards high-income countries. . . [T]heir impact is also larger when [labor clauses] are accompanied by strong cooperation.”<sup>133</sup> Thus, developing “countries should not fear the introduction of [labor clauses] as a protectionist tool in trade agreements, as they help rather than hinder their market access to high-income countries.”<sup>134</sup>

This research suggests that the WTO considers labor issues to be an urgent Article and incorporates relevant standards into its system. Bringing labor protection under the umbrella of the WTO is particularly meaningful for coffee workers. They are currently working in an industry that is largely unregulated; their basic rights at work are not guaranteed. Meanwhile, coffee is one of the most traded agricultural products in the world. The WTO, as the world’s most influential trade organization, should take responsibility for regulating this area and providing necessary protection. But, how the WTO should incorporate labor standards into its system is an area that is worthy of further investigation, and it goes beyond the scope of this Article.<sup>135</sup> At the beginning, it will be difficult for developing countries to enforce international labor standards and change their labor practices for various reasons. Nevertheless, technical, financial, and human resources support from WTO members would make a huge difference and help developing countries to achieve a smooth transition to higher labor standards.

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<sup>131</sup> *Id.* at 2.

<sup>132</sup> *Id.* at 22.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> See generally Christian Barry & Sanjay G. Reddy, *International Trade and Labor Standards: A Proposal for Linkage*, 39 CORNELL INT’L L.J. 545 (2006) (presenting a proposal for linking trade and labor standards).



*iii. The International Coffee Organization*

"The ICO was set up . . . in 1963 under the auspices of the United Nations because of the great economic importance of coffee."<sup>136</sup> It is comprised of both coffee exporting and importing countries; specifically, its members "represent 98% of world coffee production and 67% of world consumption."<sup>137</sup> The ICO is the most important intergovernmental organization for coffee trade; it provides "a forum for intergovernmental consultations"; it "facilitates international trade through increased transparency and promotes a sustainable coffee economy for the benefit of all stakeholders and particularly of small-scale farmers in coffee producing countries."<sup>138</sup> It also "bring[s] together exporting and importing Governments to tackle the challenges facing the world coffee sector through international cooperation."<sup>139</sup>

The ICO formally adopted the 2007 International Coffee Agreement (hereinafter "2007 ICA") on February 2, 2011.<sup>140</sup> The primary purpose of the 2007 ICA "is to strengthen the global coffee sector," maintain exporting countries' quotas, and keep coffee prices fair (both to consumers and to producers) and stable in the global

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<sup>136</sup> *Mission*, INT'L COFFEE ORG., [http://www.ico.org/mission07\\_e.asp](http://www.ico.org/mission07_e.asp) [<https://perma.cc/QWJ3-2WX4>].

<sup>137</sup> *Id.*

<sup>138</sup> *International Coffee Agreement 2007 - Benefits of Membership*, INT'L COFFEE ORG., [http://www.ico.org/Benefits\\_ICA2007.asp](http://www.ico.org/Benefits_ICA2007.asp) [<https://perma.cc/S2RA-WYBG>]; see also *International Coffee Agreement 2007* art. 1(4), Sept. 28, 2007, Int'l Coffee Org. [hereinafter 2007 ICA], <http://www.ico.org/documents/ica2007e.pdf> [<https://perma.cc/9Z3P-UMAF>] (objectives of agreement) ("[P]roviding a forum for consultations seeking understanding with regard to the structural conditions in international markets and long-term trends in production and consumption that balance supply and demand, and result in prices fair both to consumers and to producers . . .").

<sup>139</sup> *Mission*, *supra* note 136. For a full list of members of the ICO, see *Members of the International Coffee Organization*, INT'L COFFEE ORG., [http://www.ico.org/members\\_e.asp](http://www.ico.org/members_e.asp) [<https://perma.cc/3EMF-9PF6>]. The ICO includes forty-three coffee exporting members, such as Colombia, Costa Rica, Cuba, Honduras, Brazil, and Vietnam, and six coffee importing members, such as the European Union, Japan, Norway, and Switzerland. *Id.*

<sup>140</sup> *International Coffee Agreement 2007*, INT'L COFFEE ORG., <http://www.ico.org/ica2007.asp> [<https://perma.cc/HUD2-M6FU>] (general introduction).

market.<sup>141</sup> Although the 2007 ICA has touched upon the burning labor issues in the coffee industry, it provides very little beyond general principles. In its Preamble, the 2007 ICA acknowledges “the need to foster the sustainable development of the coffee sector, leading to enhanced employment and income, and better living standards and working conditions in Member countries . . . .”<sup>142</sup> Article 37 briefly elaborates on this point, stating, “[m]embers shall give consideration to improving the standard of living and working conditions of populations engaged in the coffee sector, consistent with their stage of development, bearing in mind internationally recognized principles and applicable standards on these matters.”<sup>143</sup> It is clear that coffee workers’ rights are not a prioritized task for the 2007 ICA or the ICO in general.

The enforcement of ICO decisions is also problematic. Article 14(3) of the 2007 ICA requires its members to accept “all decisions of the Council under the provisions of th[e] Agreement” as legally binding.<sup>144</sup> Nevertheless, in practice, the acceptance of these binding decisions often “require[s] considerable political will.”<sup>145</sup> The dilemma is that members often lacks the political will to enforce these decisions. Furthermore, as the United States, the world’s largest coffee importing country, withdrew from the Agreement, the 2007 ICA essentially is falling apart.<sup>146</sup>

It is not an easy task to revive the 2007 ICA, especially with the absence of a major player in the global coffee market. Even if the ICA can be revived, the ICO lacks the authority to enforce its decisions and sanction non-compliant members. As such, the ICO plays a minor role in protecting labor rights in coffee producing countries, and this will remain unchanged in the foreseeable future.

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<sup>141</sup> 2007 ICA, *supra* note 138, art. 1.

<sup>142</sup> *Id.* pmb1.

<sup>143</sup> *Id.* art. 37.

<sup>144</sup> *Id.* art. 14(3).

<sup>145</sup> Weese, *supra* note 20, at 304.

<sup>146</sup> Press Release, Int’l Coffee Org., U.S. Withdraws from Int’l Coffee Agreement (Apr. 3, 2018), <http://www.ico.org/documents/cy2017-18/pr-295e-withdrawal-usa.pdf> [<https://perma.cc/EYM8-B45A>].

*iv. Summary*

The nature of the ICO is such that it may not be able to play a major role in improving labor practices in the coffee industry. As for the ILO and other UN bodies – although they are quite successful in convincing States to ratify international instruments for global labor protection—they have little authority to enforce their own labor standards.<sup>147</sup> “[M]utual policing of human rights standards that should occur among signatories to the international agreements is [also] diluted to such an extent that the ‘obligations’ become essentially toothless.”<sup>148</sup> It is imperative that the ILO and international human rights bodies work on improving the efficiency of their enforcement mechanisms for labor protection. Nevertheless, the world also needs to acknowledge that this is an area where change cannot be easily made; we should not rely exclusively on international organizations to ensure the domestic implementation of labor standards.

As compared to the ILO and other international organizations, the WTO is more capable of tackling the human rights challenges facing the coffee industry. The WTO deals with the global rules of trade,<sup>149</sup> and trade is a sensitive area that could create a strong motivation for members to interfere in other countries’ labor practices in order to protect their own trade and economic interest. Moreover, the WTO is the world’s most powerful trade organization that can utilize multilateral trade sanctions against countries that violate labor rights. To be fair, the WTO would be justified in enforcing their labor standards in countries with human rights violations in the coffee industry. Labor abuse and exploitation can be perceived “as an illegal trade subsidy that constitutes an unfair comparative advantage under the WTO.”<sup>150</sup> States engaging in

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<sup>147</sup> See Baradaran & Barclay, *supra* note 6, at 18-21 (“Since a country’s compliance with international human rights standards is only voluntary, attempts to enforce these standards have not been widely successful.”).

<sup>148</sup> *Id.* at 19.

<sup>149</sup> WTO in Brief, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm) [<https://perma.cc/QW5E-LFE6>].

<sup>150</sup> Baradaran & Barclay, *supra* note 6, at 4-5; see also Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 YALE J. INT’L L. 361, 403-04 (1995).

unfair trading practices should be punished under the WTO rules.<sup>151</sup> The WTO should consider the incorporation of labor standards into its legal framework.

Some scholars may argue that the WTO dispute settlement system is currently facing a dysfunctional crisis with the United States blocking new appointments of members to the Appellate Body.<sup>152</sup> This Article acknowledges that the crisis will inevitably undermine the WTO's ability to solve trade disputes for a period of time. However, this is only a temporary blocking implemented by the Trump Administration. The WTO will ultimately overcome this crisis. On the one hand, the Trump Administration, along with its war on the WTO, will end in 2021 when the new presidential administration takes office. On the other hand, most WTO members are still optimistic about the future of the WTO Appellate Body and continue making efforts to save the system. For example, the European Parliament passed a resolution on November 28, 2019, encouraging the EU "Commission to continue its engagement with all of the WTO Members, including the United States, in order to unblock the appointments procedure as a matter of priority."<sup>153</sup> Meanwhile, China has also pledged continuous efforts to tackle the challenges facing the WTO Appellate Body, confirming, "the efforts by all sides to safeguard the multilateral trading regime will not stop."<sup>154</sup> Thus, in the long term, it is important to bring labor issues into the WTO.

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<sup>151</sup> See Baradaran & Barclay, *supra* note 6, at 21-22 (describing proposal of imposing economic sanctions and penalties on transgressor states).

<sup>152</sup> See Matteo Fiorini, Bernard Hoekman, Petros Mavroidis, Maarja Saluste & Robert Wolfe, *WTO Dispute Settlement and the Appellate Body Crisis: Insider Perceptions and Members' Revealed Preferences*, VOXEU (Nov. 20, 2019), <https://voxeu.org/article/wto-dispute-settlement-and-appellate-body-crisis> [<https://perma.cc/9JXX-Z6RZ>].

<sup>153</sup> Resolution on the Crisis of the WTO Appellate Body, EUR. PARL. DOC. (2019/2918 (RSP)) para. E(4) (2019), [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0083\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0083_EN.pdf) [<https://perma.cc/7NTC-3VGJ>].

<sup>154</sup> Xinhua, *China Pledges Continuous Efforts to Tackle Challenges Facing WTO Appellate Body*, CHINADAILY (Dec. 9, 2019, 9:24 PM), <http://www.chinadaily.com.cn/a/201912/09/WS5dee4b24a310cf3e3557cf4c.html> [<https://perma.cc/3XNA-J2P3>].

*b. Domestic Protection*

At the national level, most countries in the world, including Brazil, have acknowledged labor rights as important human rights.<sup>155</sup> Four fundamental principles and rights at work are commonly accepted to be of particular importance:

[N]amely . . . freedom of association and the effective recognition of the right to collective bargaining[,] . . . the elimination of all forms of forced or compulsory labour[,] . . . the effective abolition of child labor[,] and . . . the elimination of discrimination in respect of employment and occupation.<sup>156</sup>

Furthermore, minimum pay and workplace safety standards have also been widely recognized around the world.<sup>157</sup> However, the implementation of these rights varies in different countries. Developing countries, including Brazil and most other coffee producing countries, have not fully actualized these rights.<sup>158</sup> Often, they “do not have the resources to institute lofty labor standards and some lack the incentive to do so.”<sup>159</sup> Enforcement mechanisms are also ineffective, particularly for persistent violators.<sup>160</sup>

For example, Brazil’s 1988 Constitution<sup>161</sup> contains several provisions protecting labor rights.<sup>162</sup> Among others, Article 7 guarantees the right to a reasonable standard of living through providing for a national uniform minimum wage; it protects the

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<sup>155</sup> See generally ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Jun. 18, 1998), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/normativeinstrument/wcms\\_716594.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf) [<https://perma.cc/WG69-82CV>] (stating ILO’s Members have accepted the ILO Declaration on Fundamental Principles and Rights at Work and endorse its principles).

<sup>156</sup> *Id.* para. 2.

<sup>157</sup> Thompson, *supra* note 5, at 161.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> See *id.* at 161-62.

<sup>161</sup> CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1988 [C.F.] Oct. 5, 1988 (Braz.), [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf) [<https://perma.cc/L8YA-V6L9>] (citing Brazil’s 1988 Constitution in English translation).

<sup>162</sup> See *id.* arts. 7-9.

right to rest and leisure through regulating working hours and setting overtime rates.<sup>163</sup> Article 7 also ensures the right to equal pay, the right to a safe work environment,<sup>164</sup> and it prohibits child labor.<sup>165</sup> Articles 8 and 9 legalize trade unions, collective bargaining, and the right to strike in both the public and private sectors.<sup>166</sup> Apart from constitutional protection, Brazilian workers' rights are also protected by the *Consolidação das Leis do Trabalho* (the 2019 Consolidation of Labour Laws, known as the "Labour Code"),<sup>167</sup> and a number of complementary laws and regulations, such as Law 9029/1995 (prohibiting discrimination in the workplace),<sup>168</sup> and Law 11770/2008 (regulating maternity leave).<sup>169</sup> It is fair to say that Brazil has a set of comprehensive laws to protect labor rights. Nevertheless, the reality, as discussed previously, reveals that there exists a huge discrepancy between the law on paper and the actual implementation. The legal system fails to protect Brazilian coffee workers from being abused and exploited.

Guatemala also serves as the quintessential example of implementation frustrations. In Guatemala, the *Código de Trabajo* ("Labor Code") enumerates minimum labor standards, including, for example, minimum wages and restrictions on working hours;<sup>170</sup> it also prohibits child labor, legalizes trade unions, and protects agricultural workers' "right to hygienic living conditions that meet

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<sup>163</sup> *Id.* art. 7.IV, XIII-XVII.

<sup>164</sup> *Id.* art. 7.XXII-XXIII, XXVIII, XXX-XXXI.

<sup>165</sup> *Id.* art. 7.XXXIII.

<sup>166</sup> *Id.* arts. 8-9.

<sup>167</sup> Decreto-Lei No. 5.452, de 1 de Maio de 1943, CONSOLIDAÇÃO DAS LEIS DO TRABALHO [C.L.T.] [CONSOLIDATION OF LABOUR LAWS] (Braz.) (last amended by Lei No. 13.874 de 2019).

<sup>168</sup> Lei No. 9.029, de 13 de Abril de 1995, Diário Oficial da União [D.O.U.] de 17.4.1995 (Braz.) (on prohibition of discriminatory practices in employment) (last amended by Lei No. 13.146 de 2015); see also *Brazil - Legal Coverage*, EMP. PROT. LEGIS. DATABASE (EPLEX), ILO, <https://eplex.ilo.org/country-detail/?code=BRA&yr=2019> (click on "legal coverage" to view sources of Brazilian labour law and scope of regulations) [<https://perma.cc/GU4K-RXGN>].

<sup>169</sup> See Lei No. 11.770, de 9 de Setembro de 2008, Diário Oficial da União [D.O.U.] de 10.9.2008 (Braz.) (regulating maternity leave) (last amended by Lei No. 13.257 de 2016).

<sup>170</sup> CÓDIGO DE TRABAJO DE GUATEMALA, Decreto No. 1441, (Guatemala Labor Code, Decree No. 1441), título III, capítulo II, and títulos III and V, <https://www.wipo.int/edocs/lexdocs/laws/es/gt/gt015es.pdf> [<https://perma.cc/K3EZ-6GPW>].

health requirements.”<sup>171</sup> As Thompson has noted, “[o]n paper, Guatemala is committed to upholding labor rights as demonstrated by its domestic labor policies and its ratification of International Labour Organization . . . conventions.”<sup>172</sup> However, in practice, “despite its domestic and international pledges, Guatemala’s labor conditions for coffee growers continue to violate its human right pledges.”<sup>173</sup> For example, although the law provides for a minimum wage, many coffee plantations still do not pay the minimum wage to their regular workers or seasonal and migrant workers.<sup>174</sup> Besides, child labor remains prevalent in the country’s coffee industry.<sup>175</sup> Guatemala is generally “considered one of the ‘worst violators of labour rights in the world today.’”<sup>176</sup>

Brazil and Guatemala are not alone in this. Almost all coffee-producing countries have incorporated core ILO labor standards into their legal systems. Most of them have developed a set of comprehensive laws to protect labor rights.<sup>177</sup> However, a persistent problem facing the coffee industry is that labor protection is largely limited to the law on paper. In practice, labor conditions remain poor, and there has been very little improvement on the coffee plantations. When the rubber hits the road, poor enforcement undermines the credibility of labor laws. There is an urgent need for Brazil and all other coffee-producing countries to improve the efficiency of the existing enforcement mechanisms.

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<sup>171</sup> Thompson, *supra* note 5, at 168 (quoting VERITÉ, RESEARCH ON INDICATORS OF FORCED LABOR IN THE SUPPLY CHAIN OF COFFEE IN GUATEMALA 81, [https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Guatemala-Coffee-Sector\\_\\_9.16.pdf](https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Guatemala-Coffee-Sector__9.16.pdf) [<https://perma.cc/BQ9B-FJR2>]).

<sup>172</sup> *Id.* at 169.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 176.

<sup>176</sup> *Id.* (quoting *International Trade Union Confederation Worker’s From Around the World File Complaint with the ILO Urging Guatemala to Respect the Right of Freedom of Association*, INT’L TRADE UNION CONFEDERATION (June 15, 2012), <https://www.ituc-csi.org/workers-from-around-the-world-file> [<https://perma.cc/545Z-KHWM>]).

<sup>177</sup> See *Labour Law (National)*, INT’L. LAB. ORG., <https://www.ilo.org/inform/online-information-resources/research-guides/national-labour-law/lang--en/index.htm> [<https://perma.cc/DFV8-3YE4>] (listing information on International Labour Standards as well as national labour and social security laws collected by the ILO’s International Labour Standards Department).

A “one-size-fits-all” approach does not exist. However, this Article proposes that coffee-producing countries should consider the following points while developing their own strategies to enforce labor standards. First of all, a strong political will to bring about change is the most important element to achieve adequate labor protection. It demonstrates whether governments are truly committed to taking action or simply paying lip service. If governments are truly committed, there is no rocket science in any of the action plans. If they lack the political will to ensure enforcement, labor laws are ineffectual.

Secondly, a universal problem facing coffee-producing countries is that the roles and responsibilities of government departments are often unclear, resulting in bureaucratic “buck-passing.”<sup>178</sup> The ambiguous existence of government departments may significantly discourage victims from reporting and seeking remedies. To reduce the bureaucratic ambiguity and to provide the necessary protection for coffee workers, governments must establish clear lines of responsibility, develop and implement department specific policies and procedures, and ensure that staff are well-trained to carry out their daily responsibilities.

Thirdly, as developing countries, most coffee-producing countries lack the necessary human and financial resources.<sup>179</sup> This constrains government functions in various aspects. There is only so much that governments are able to do in terms of monitoring labor conditions and enforcing labor standards. In response to the capacity issue, this research suggests that public engagement should be encouraged. The media, the general public, labor unions, individual coffee workers, and other stakeholders can help bridge the capacity gap, contributing to the monitoring and reporting of abusive labor practices on the coffee plantations. Specifically, the media plays a critical role in exposing labor issues and attracting public attention, and it can also serve as a platform to educate the general public about labor rights. Heightened public awareness boosts the demand for increased protection of labor rights. Thus, it is essential that governments use “people power” to help improve their labor practices.

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<sup>178</sup> See B. C. SMITH, UNDERSTANDING THIRD WORLD POLITICS: THEORIES OF POLITICAL CHANGE AND DEVELOPMENT 225 (1996).

<sup>179</sup> Thompson, *supra* note 5, at 161.



Furthermore, a reporting rewards system would provide more incentives for greater citizen engagement in the fight against labor abuse and exploitation on the coffee plantations. Individuals should be allowed to report violations of labor rights by visiting a designated government agency, filling out complaint forms, or calling a hotline. Whistle-blowers should receive either a cash reward or a non-financial reward, provided that the violation is verified to be true. However, there are two concerns with respect to the establishment of a reporting rewards system. Some governments may struggle to set up such a system due to financial hardship. Meanwhile, for those governments who are able to establish a rewards system, they would still need to overcome obstacles to implementation. In general, it is local governments that bear the responsibility for complaint management. The reality is that individual local governments handle complaints differently. In practice, corruption, bureaucracy, and local protectionism are major issues,<sup>180</sup> affecting the effective enforcement of a reporting rewards system. Local governments may not be willing to offend local coffee plantations because they may have some sort of relationship with them for a variety of reasons. Among those reasons, corruption often plays a principal role in establishing these relationships.

Corruption, bureaucracy, local protectionism, and other social problems may undermine the proposed reporting rewards system. Nevertheless, as indicators of poor governance, they are also the leading causes for the weak enforcement of labor standards.<sup>181</sup> Poor governance is among the top reasons why the whole system is failing fundamentally. It constrains a government from enforcing

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<sup>180</sup> See Eduardo Mello & Matias Spektor, *How to Fix Brazil: Breaking an Addiction to Bad Government*, 95 FOREIGN AFFS. 102, 102-10 (2016) (providing a detailed discussion on Brazil's corruption problems).

<sup>181</sup> See, e.g., Günseli Berik & Yana van der Meulen Rodgers, *The Debate on Labor Standards and International Trade: Lessons from Cambodia and Bangladesh* 12-13 (Leibniz Info. Ctr. for Econ., Working Paper No. 2007-03, Jan. 2008), <https://www.econstor.eu/obitstream/10419/64483/1/572640323.pdf> [<https://perma.cc/4NYB-APS4>] (Corruption was viewed as the main reason why enforcement of Cambodia's 1997 Labor Code was so difficult before the U.S.-Cambodia trade agreement"); see also Lucas Ronconi, *Enforcement of Labor Regulations in Developing Countries*, IZA WORLD OF LABOR, Mar. 2019, <https://wol.iza.org/uploads/articles/478/pdfs/enforcement-of-labor-regulation-s-in-developing-countries.pdf?v=1> [<https://perma.cc/4NY2-G323>] (noting that enforcement of labor standards can be politicized and sometimes labor inspectors can be corrupted by lobby groups).

its labor laws. It also affects all aspects of social, economic, and political development. Thus, the improvement of labor practices is a comprehensive project requiring more than just dealing with implementation issues. It is imperative that governments in coffee-producing countries have the full picture in mind while tackling labor issues. They must be committed to improving governance, which includes reducing corruption, bureaucracy and local protectionism, as well as upholding the rule of law and enhancing government accountability and transparency.

Other social problems must also be effectively dealt with effectively. Poverty is the root cause of many social problems. Thus, economic security must be increased so that poverty can be alleviated. Furthermore, food security must be protected so that workers do not take the risk of being enslaved only because they want to put food on the table. Environmental security must be ensured so that sustainable development can be guaranteed.

Many coffee-producing countries, such as Brazil, have been making efforts to improve government practices on labor protection. However, there remain many legal and practical challenges to overcome, and doing so is not an easy task.

#### IV. THE ROLE OF THE PRIVATE SECTOR IN IMPROVING LABOR PRACTICES IN THE COFFEE INDUSTRY

The improvement of labor practices requires enormous effort from both the public and private sectors. As discussed earlier, in the public sector, much work remains to be done to enhance the compliance and implementation of labor standards at both the international and national levels. In the private sector, public engagement must be strongly encouraged, as it can play an important role in facilitating the monitoring of labor practices. Moreover, this Article contends that coffee consumers and major coffee companies also hold tremendous potential for bringing coffee farmers and workers out of the shadows. The following discussion examines the role of the private sector in improving labor practices in the coffee industry.

*a. Fair Trade and Ethical Consumerism*

*i. Fair Trade and its Advantages*

As mentioned earlier, international human rights instruments and national governments have attempted to improve labor practices in the coffee industry, with only marginal success.<sup>182</sup> The world has gradually turned to the private sector for solutions, which has directly resulted in the growth and development of fair trade coffee.<sup>183</sup>

In the upstream supply chains, fair trade organizations cut out most of the intermediaries. Coffee producers get to work directly with international wholesalers, who have direct access to global coffee markets.<sup>184</sup> Through private monitoring and enforcement, fair trade also strives “to ensure that transnational supply chains do not exploit human and social rights.”<sup>185</sup> The use of forced labor and child labor is strictly prohibited.<sup>186</sup> Fair (higher) prices are paid to coffee producers and workers so that they have a guaranteed income to sustainably maintain their livelihoods and reach their potential.<sup>187</sup> In exchange, the participating plantations must implement “various human rights and labor standards that benefit [coffee] workers.”<sup>188</sup> They must also keep their finances and working conditions

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<sup>182</sup> See Thompson, *supra* note 5, at 175-77, 192.

<sup>183</sup> JOHN BOWES, *THE FAIR TRADE REVOLUTION* 4 (2011) (“The initial development of fair trade products was . . . [based] on the genuine concerns of a relatively small number of activists about poverty-stricken farmers in the global south. These pioneers sought to establish new trading models whereby producers achieved improved market access and received a fairer reward for their products.”).

<sup>184</sup> Dhillon-Penner, *supra* note 19, at 218-19.

<sup>185</sup> Baradaran & Barclay, *supra* note 6, at 39.

<sup>186</sup> See Ivan Manokha, *Modern Slavery and Fair Trade Products: Buy One and Set Someone Free*, in *THE POLITICAL ECONOMY OF NEW SLAVERY* 217, 220-21 (Christien Van Den Anker, ed., 2004).

<sup>187</sup> Baradaran & Barclay, *supra* note 6, at 40 (“[W]orkers benefit because fair trade increases the chance that they will be given a fair wage, decent working conditions, and a guaranteed ‘premium’ spent on development projects in their community, such as improved living and working conditions.”).

<sup>188</sup> *Id.* at 5.

transparent,<sup>189</sup> and allow fair trade organizations to carry out random inspections to ensure compliance.<sup>190</sup>

In the downstream supply chains, fair trade is “developed as a consumer-powered remedy for the coffee industry’s repeated human rights violations.”<sup>191</sup> While it guarantees the coffee meets “strict economic, social, and environmental criteria” throughout the production process,<sup>192</sup> consumers pay a premium for the coffee. Fair trade is a market-based approach, although it “considers all of the costs of production—direct and indirect—rather than just market conditions to determine how much to compensate workers and producers.”<sup>193</sup>

Fair trade addresses some of the root causes of labor issues, such as poverty. It has been relatively successful in providing fair pay to coffee farmers and workers and in improving working conditions on the plantations. A ten-year review of the Fairtrade Foundation conducted by the Natural Resources Institute revealed, on average, fair trade participants had “higher returns, more stable incomes, greater access to training and market knowledge, progress in levels of democracy and participation in cooperatives, greater access to credit, and increased environmentally sound practices.”<sup>194</sup> In particular, coffee “producers receive[d] 10 percent to 40 percent more through a fair trade commodity chain as opposed to a traditional coffee commodity chain.”<sup>195</sup> Moreover, child labor has also been largely reduced.<sup>196</sup> Thompson’s research has confirmed that, with sustainable wages, families can afford not to have all their family members work on the plantations.<sup>197</sup> Some successful fair trade programs even enable coffee workers to send their children to

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<sup>189</sup> Thompson, *supra* note 5, at 178.

<sup>190</sup> Baradaran & Barclay, *supra* note 6, at 40.

<sup>191</sup> Thompson, *supra* note 5, at 162.

<sup>192</sup> Baradaran & Barclay, *supra* note 6, at 39-40.

<sup>193</sup> *Id.* at 40.

<sup>194</sup> Thompson, *supra* note 5, at 182.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 181-82.

<sup>197</sup> *Id.* at 181.

school, such as *La Voz Que Clama en el Desierto* co-op in Guatemala and the COOCAFE co-op in Costa Rica.<sup>198</sup>

ii. *Challenges and Responses*

With the public system failing to make major improvements to global labor practices, fair trade indeed provides practical support to coffee producers and workers on the ground. Nevertheless, two challenges still lie ahead: limited consumer base and potential market distortion. Although fair trade coffee has seen impressive market growth over the last decade,<sup>199</sup> it remains a niche market, constituting only 1.8% of global coffee sales.<sup>200</sup> The limited consumer base means only a limited number of coffee producers and workers can be supported.<sup>201</sup> In addition, fair trade also faces the criticism that it may not be as sustainable as it appears to be. For example, through paying a premium to the participants, fair trade discriminates against non-participants.<sup>202</sup> It “does not fit within the supply and demand economic model”<sup>203</sup> but creates an artificial market and “encourages non-competitive producers to remain in

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<sup>198</sup> *Id.* at 182. Thompson provides two examples of successful fair trade schemes that “have allowed children the opportunity to obtain an education.” *Id.* The first example is “*La Voz Que Clama en el Desierto*, a successful co-op in Guatemala that produces strictly organic coffee.” The co-op indicates “that high incomes have facilitated investments in local education and ‘all co-op members have been able to send their children to elementary and secondary school.’” *Id.* (quoting TRANSFAIR USA, FAIR TRADE COFFEE COOPERATIVE PROFILE: GUATEMALA, [https://www.coffee-tea-etc.com/Data/about\\_coffee/meet\\_our\\_coffee\\_pr/guatemala/guate.pdf](https://www.coffee-tea-etc.com/Data/about_coffee/meet_our_coffee_pr/guatemala/guate.pdf) [<https://perma.cc/S22R-XD62>]). “Similar success has [also] been found in the COOCAFE cooperative in Costa Rica, which has allocated some of their fair trade premiums into an education fund that doles out scholarships.” *Id.*

<sup>199</sup> See Baradaran & Barclay, *supra* note 6, at 5 (“Fair trade is one of the fastest growing markets in the world.”).

<sup>200</sup> Dhillon-Penner, *supra* note 19, at 219.

<sup>201</sup> *Id.* at 223.

<sup>202</sup> See Thompson, *supra* note 5, at 185 (“The exclusion of plantations from fair trade certification excludes millions of coffee workers from participating in a fair trade system.”).

<sup>203</sup> Dhillon-Penner, *supra* note 19, at 220.

the market.”<sup>204</sup> This is not a level playing field for coffee producers that do not participate in fair trade programs.<sup>205</sup>

1. *Increasing the Consumer Base for Fair Trade Coffee*

Fair trade operates on consumer awareness. Extensive support from consumers is crucial for fair trade to achieve its long-term goals of improved social and environmental standards. This Article advocates for ethical consumerism. Collectively, consumers can be a powerful market force; they play a key role in creating a robust market for ethical coffee. The global campaign to boycott Nike in the 1990s is a good example of how ordinary consumers bring multinational corporations to account. It proves that “ethical consumerism has the power to greatly influence the market.”<sup>206</sup>

In the early 1990s, the media across the world reported on the horrendous labor abuses at Nike’s global factories, such as child labor in Cambodia and Pakistan, and underpaid workers in Indonesia.<sup>207</sup> For years, many consumers ceased purchasing Nike products. In response to this brand disaster, Phil Knight, the then-Chairman and CEO of Nike, “announced Nike would be raising the minimum wage in their south Asian factories, the factories would adopt OSHA clean air standards, and Nike would increase monitoring in its overseas factories.”<sup>208</sup> Since then, Nike has been dedicated to the improvement of its global labor practices. Hundreds of internal audits have been conducted to ensure Nike’s compliance with labor standards at its factories.<sup>209</sup> The Fair Labor Association, an independent and non-profit labor association, was

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<sup>204</sup> *Id.* at 222; see also JAMES BOVARD, *THE FAIR TRADE FRAUD* 306-18 (1991) (discussing generally the morality of fair trade and protectionism).

<sup>205</sup> See Dhillon-Penner, *supra* note 19, at 222-23.

<sup>206</sup> Thompson, *supra* note 5, at 190.

<sup>207</sup> Richard M. Locke, Fei Qin, & Alberto Brause, *Does Monitoring Improve Labor Standards? Lessons from Nike*, 61 *INDUS. & LAB. RELS. REV.* 3, 8 (2007); see also Thompson, *supra* note 5, at 189 (“In 1992, . . . Jeff Ballinger[] expos[ed] . . . Indonesian Nike sweatshop conditions and their lack of minimum wage pay. Between 1993 and 1995, almost every American television network was broadcasting investigative reports and at the same time, international critics were publishing print articles condemning these factories.”).

<sup>208</sup> Thompson, *supra* note 5, at 190.

<sup>209</sup> *Id.*

also created by Nike to monitor the working conditions of its global factories.<sup>210</sup> After years of effort, Nike has improved its global labor practices<sup>211</sup> and eventually repaired its brand image.

The Nike case has demonstrated two important points. First of all, the media plays an important role in exposing abusive labor practices to the general public. It must continue to act as a watchdog to protect the public interest against malpractice and create public awareness. Secondly, consumer awareness is fundamental to ethical consumerism. The increased awareness of and demand for ethical products serves “as a social audit for co[mpanies].”<sup>212</sup> Also, consumers have the power to influence the market.<sup>213</sup> In a general sense, consumers are not willing to purchase products that are sourced, produced or made under abusive labor conditions. Research has verified the validity of this statement. For example, Miguel Zamora’s work indicates that “most consumers (including coffee consumers) . . . care about human rights issues in the products they purchase.”<sup>214</sup> In addition, given that coffee is produced in some of the world’s poorest countries and consumed by some of the world’s wealthiest countries, very little money is required from consumers. Natasha Dhillon-Penner’s research reveals, “consumers in the developed world are willing to pay more than market price – a so-called premium – for a product in solidarity with workers in developing countries.”<sup>215</sup>

Nevertheless, “[f]or fair trade to be effective, consumers must be aware of the conditions surrounding the production of their

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<sup>210</sup> *Id.*

<sup>211</sup> See *Nike Earns Third FLA Reaccreditation*, NIKE, <https://purpose.nike.com/fair-labor-association-reaccreditation> [<https://perma.cc/JV6R-K7PW>] (“[T]he Fair Labor Association (FLA) board of directors voted to re-accredit Nike’s social compliance program for the third time.”).

<sup>212</sup> Thompson, *supra* note 5, at 189; see also ALEX NICHOLLS & CHARLOTTE OPAL, FAIR TRADE: MARKET-DRIVEN ETHICAL CONSUMPTION 72-73 (2005).

<sup>213</sup> See Thompson, *supra* note 5, at 189-90.

<sup>214</sup> Miguel Zamora, *A Call for the Coffee Industry to Address Labor Issues in Producing Countries*, RAINFOREST ALL. (Apr. 11, 2019), <https://www.rainforest-alliance.org/business/responsible-sourcing/collective-action-a-call-for-the-coffee-industry-to-address-labor-issues-in-producing-countries/> [<https://perma.cc/DH8R-B8HQ>].

<sup>215</sup> Dhillon-Penner, *supra* note 19, at 217.

commodities.”<sup>216</sup> If a supply chain systemically violates labor rights and the unethical practices are revealed to the public, many consumers will refuse to purchase certain brands of coffee. If the violations are not revealed to the public, consumers would not be aware of the dark side of coffee businesses. It follows that they would not demand ethically produced coffee, and coffee companies would not have the monetary incentives to investigate or remedy abusive labor conditions on the plantations. This research suggests that, in addition to the media, governments in coffee consuming countries can also play an important role in raising consumers’ awareness and promoting ethical consumerism and fair trade.

Firstly, coffee consuming countries may consider developing a set of unified fair trade standards including labor standards and general human rights standards, in addition to a unified labeling approach in the sale of fair trade coffee. A unified approach helps consumers understand how coffee supply chains operate and why they should trust the certification labels; it eliminates consumer confusion and ensures the sustainability of fair trade.<sup>217</sup> Improved transparency makes it easier for consumers to make ethical choices. Some scholars propose that international organizations, such as the ILO, should also incorporate fair trade into their enforcement mechanisms.<sup>218</sup> In response to this proposal, this Article acknowledges that it is a potential solution, but not necessarily an enforceable one. The actual implementation remains a persistent problem due to the lack of authority in these international organizations. Thus, it would be more practical to incorporate fair trade standards into the domestic legal framework. These standards are likely to be effectively enforced at the national level, particularly in developed countries where the rule of law is highly respected.

Secondly, although governments are not in a position to advise consumers on purchasing decisions, they can always design policies to influence consumers. For example, governments in coffee consuming countries may consider publishing an official “name and shame” list of businesses caught violating labor rights periodically. The purpose of the list is to increase awareness of labor issues in the coffee industry in an effort to stop abusive labor practices.

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<sup>216</sup> Thompson, *supra* note 5, at 179.

<sup>217</sup> *Id.* at 162.

<sup>218</sup> *Id.*



Consumers may choose to boycott unethically produced coffee. As compared to other channels, the government-published list would be more authoritative when exposing the violations. For instance, the US government launched a similar initiative to combat child labor and forced labor. The Department of Labor Bureau of International Labor Affairs produces and makes publicly available a list of goods produced by child labor or forced labor.<sup>219</sup> Although some scholars questioned the effectiveness of the list,<sup>220</sup> the initiative improved public awareness and reduced child labor practices to some extent. However, this research also acknowledges that there may be some problems associated with the boycott approach. It may further increase hardship for coffee workers, particularly when they lose their jobs as well as an important source of income for surviving.<sup>221</sup>

## 2. Market Distortion

Fair trade is, at its heart, a market intervention, although the main purpose is to mitigate abusive labor practices and other human rights violations. The prices paid to fair trade participants are not market-driven, and the intervention may potentially undermine free

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<sup>219</sup> U.S. DEP'T OF LAB'S. BUREAU OF INT'L LAB. AFFS., 2020 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR (2020), [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2019/2020\\_TVPRAList\\_Online\\_Final.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRAList_Online_Final.pdf) [<https://perma.cc/2QLU-GEBC>]

<sup>220</sup> Baradaran & Barclay, *supra* note 6, at 38. Baradaran and Barclay noted that this list only "indicated which countries had produced these child labor-dependent goods. However, it failed to identify specific companies or supply chains that are guilty of using products or goods produced by child labor, and thus the effectiveness of this list for raising awareness is significantly limited. These efforts on the part of the United States have been an improvement in combating child labor, but . . . the strategy lacks a targeted approach that focuses on the primary causes of child labor." *Id.*

<sup>221</sup> *Id.* at 27. Baradaran and Barclay provide an example of this, noting that about "fifty-five thousand children in Bangladesh lost their jobs because Bangladesh Garment Manufacturers and Exporters Association feared an international boycott of their goods if its members did not comply with Bangladeshi law prohibiting child labor." *Id.* Among these children, very few went back to school but most "turned to worse-paid and more difficult forms of employment." *Id.*

markets. Also, it is unfair for those who do not participate in the programs.

To date, fair trade is yet to have a major impact on global coffee trade because it remains a niche market.<sup>222</sup> Therefore, market distortion caused by fair trade programs is minimal.<sup>223</sup> This situation may change when the majority of global coffee consumers demand fair trade coffee. However, it is unlikely for that to happen immediately as it requires an enormous collective effort to raise consumers' awareness and to increase the size of the fair trade market.

Although this may only be wishful thinking, more producers will join fair trade programs due to consumer pressure. Hopefully, these programs will ultimately change the dynamic of the labor relationship between coffee producers and workers and contribute to the improvement of global labor practices. By then, there would be less need for fair trade interventions. With the phase-out of the fair trade programs, market distortion would eventually disappear.

### *iii. Summary*

"Fair trade is a unique and appealing [market-based] approach" that responds to the difficulties faced by coffee producers and workers.<sup>224</sup> Through private monitoring and enforcement, fair trade has led to some improvements in labor practices. However, to further increase the effectiveness of fair trade, consumer awareness must improve and ethical consumerism must be promoted. This is mainly because companies nowadays are very concerned about their brand image and they are sensitive to public opinion. When there is an increase in consumer demand for ethically produced coffee, coffee companies have to respond; otherwise, they lose market shares. Consumers can be a powerful force to drive the improvement of labor practices in the coffee industry. Furthermore,

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<sup>222</sup> Dhillon-Penner, *supra* note 19, at 222.

<sup>223</sup> *E.g. see* William Underhill, *How Fair is Fairtrade*, NEWSWEEK (Nov. 5, 2001) (noting that, although "the potential for market distortions can't be overlooked," the market for Fairtrade coffee remains limited).

<sup>224</sup> Baradaran & Barclay, *supra* note 6, at 5 ("[Fair trade] helps producers . . . obtain special trading conditions and increased profits in exchange for meeting various human rights and labor standards that benefit workers.").

governments in coffee consuming countries should also support fair trade programs, contributing to a comprehensive solution to improve labor practices. While it is not likely that in the near future fair trade will eliminate abusive labor practices in the coffee industry, it is one of the alternatives that can help improve the well-being of coffee workers, families, and communities. The world should maximize the positive impact of fair trade programs.

*b. Major Coffee Companies' Commitment to Global Labor Protection*

*i. Unethical Labor Practices in Upstream Supply Chains*

Labor rights have been commonly acknowledged by companies across the world, and most of them claim they have done a great job in upholding labor standards and improving labor practices. Nevertheless, the fact of the matter is that many companies still struggle to solve labor issues, particularly in their upstream supply chains. For example, in 2016, Nestlé and Jacobs Douwe Egberts were criticized for not knowing their beans were produced by the plantations that used forced labor.<sup>225</sup> In coffee trade, workers at the far end of the supply chain are among the most vulnerable people, and they are often the victims of abusive labor practices. This is an issue worthy of further examination and will be discussed in more detail below.

Different from fair trade programs, the ordinary coffee supply chain is a lengthy process. It involves producers, suppliers, and importing companies.<sup>226</sup> In most cases, the supply chain is further extended by many other intermediaries, such as sub-contractors, global transporters, and retailers.<sup>227</sup> Long supply chains have virtually disconnected coffee producers from the global market.<sup>228</sup> In contrast, suppliers are familiar with and well-informed about the global market.<sup>229</sup> As such, producers heavily “rely upon [suppliers]

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<sup>225</sup> Hodal, *supra* note 43.

<sup>226</sup> See Dhillon-Penner, *supra* note 19, at 203.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

for a price that accurately reflects the commodity's value in the open market."<sup>230</sup> To achieve maximum profits, purchasers "acquir[e] beans for the lowest possible price regardless of global market conditions,"<sup>231</sup> which may indirectly encourage abusive labor practices on the coffee plantations.<sup>232</sup> Meanwhile, although major coffee companies such as Nestlé,<sup>233</sup> Starbucks,<sup>234</sup> and Jacobs Douwe Egberts<sup>235</sup> do not tolerate unethical labor practices, they do not deal with individual plantations directly.<sup>236</sup> The long supply chains make it difficult for "major coffee companies . . . to verify the sources of their beans and" the conditions under which the beans were produced.<sup>237</sup> As mentioned above, Nestlé once admitted that they had purchased coffee from Brazilian plantations that had used forced labor.<sup>238</sup> Jacobs Douwe Egberts also acknowledged, "beans from Brazilian plantations using slave labour may have ended up in

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<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> See Keren Adams, *The Human Cost of Fast Fashion is Still Too High*, SYDNEY MORNING HERALD (Apr. 23, 2018), <https://www.smh.com.au/world/asia/the-human-cost-of-fast-fashion-is-still-too-high-20180423-p4zb64.html> [<https://perma.cc/8R3T-AFSJ>] ("Low prices reinforced low wages and discouraged investment in factory safety.").

<sup>233</sup> See *Coffee*, NESTLÉ, <https://www.nestle.com/csv/raw-materials/coffee> [<https://perma.cc/7NK3-3N6K>] (noting that Nestlé is committed to sourcing coffee responsibly).

<sup>234</sup> See *Starbucks Social Impact*, STARBUCKS COFFEE CO., <https://www.starbucks.com/responsibility> [<https://perma.cc/7JCR-TMRB>] ("[Starbucks is] committed to offering high-quality, ethically purchased and responsibly produced products."); see also, *Ethical Sourcing: Coffee*, STARBUCKS COFFEE CO., <https://www.starbucks.com/responsibility/sourcing/coffee> [<https://perma.cc/LQK3-27YB>] ("[Starbucks is] committed to buying 100 percent ethically sourced coffee in partnership with Conservation International.").

<sup>235</sup> See JACOBS DOUWE EGBERTS, CORPORATE RESPONSIBILITY REPORT 18 (2019), <https://www.jacobsdouweegberts.com/siteassets/sustainability/jde-cr-report-2019---v011---final---web.pdf> [<https://perma.cc/N9D9-KYAB>]. One of their three focus areas in addressing "priority issues to drive continuous improvement in [their] supply chain" is "Equality of People[:] Awareness and practices that promote equal opportunities and improve working conditions that create better conditions for women, children and youth." *Id.*

<sup>236</sup> Hodal, *supra* note 43.

<sup>237</sup> Lopes, *supra* note 11.

<sup>238</sup> Hodal, *supra* note 43. Nestlé also acknowledged that "it bought coffee from two plantations where workers were rescued from forced labour by Brazilian authorities." *Id.*

their coffee because they do not know the names of all the plantations that supply them.”<sup>239</sup>

ii. *Human Rights Due Diligence Measures by Major Coffee Companies*

Despite the difficulties in tracing the coffee beans, it is imperative that major coffee companies make their best efforts to manage the risks of human rights violations on the plantations and improve global labor practices throughout their supply chains. This is true for two reasons. Firstly, as Rainforest Alliance’s Director of Markets Transformation Mr. Miguel Zamora points out, “[b]esides the need to tackle labor issues from a human rights perspective, the risk of not addressing them is now growing from a business accountability perspective.”<sup>240</sup> Accountability in business is critical; companies will not sustain success if profit is the only goal. As such, coffee companies must develop effective systems of business accountability to protect labor standards in supply chains. Secondly, coffee companies, particularly transnational coffee companies, have the financial resources and technical capacities to improve labor conditions on the plantations. Thus, they should strive to make a lasting impact in the coffee industry and beyond.

Although major coffee companies do not deal with individual plantations directly, they must agree that these plantations still form an integral part of their supply chains. From a business accountability perspective, coffee companies are responsible for carrying out due diligence measures to mitigate the human rights risks in their upstream supply chains, or they run a risk to their bottom line and their brand. In fact, Article 18 of the United Nations Guiding Principles on Business and Human Rights (hereinafter “UN Guiding Principles”) emphasizes corporations’ responsibility for the human rights of potentially affected groups.<sup>241</sup> It stipulates, “[i]n

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<sup>239</sup> *Id.*

<sup>240</sup> Zamora, *supra* note 214.

<sup>241</sup> See generally John Ruggie (Special Representative of the U.N. Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc.

order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.”<sup>242</sup>

To fulfill their responsibilities, coffee companies may consider developing a labor compliance system that engages producers, suppliers, and all other stakeholders. The purpose of this system is to monitor compliance and prevent and remediate violations of labor rights across the supply chains.

Firstly, in the purchasing process, coffee companies are encouraged to include a strengthened labor clause in the procurement agreements. The labor clause should require suppliers to guarantee that they only source coffee from the plantations that comply with a set of agreed upon labor standards, and they must provide full reports on compliance. Particularly, suppliers must provide detailed information on what steps they take to ensure that they do not purchase coffee from plantations employing abusive labor practices. Further, coffee companies may impose penalties, such as reducing purchases from non-compliant suppliers. They may also consider ceasing relationships with suppliers or producers that consistently ignore minimum labor standards. This strategy works most effectively when major coffee companies incorporate such a labor clause into their procurement agreements. A collective effort will compel suppliers, including powerful suppliers, as well as producers, to improve labor practices.

Secondly, as part of the labor compliance system, coffee companies should also work closely with non-governmental organizations (“NGOs”), particularly those working at the coffee origin. When coffee companies collaborate with NGOs, they have access to better information and knowledge about labor practices on the coffee plantations. Independent review reports prepared by NGOs also facilitate coffee companies to assess risks and impacts and monitor compliance in their upstream supply chains.

Thirdly, it is important that coffee companies have a complete list of plantations that supply the beans. Subject to the agreement with suppliers and individual plantations, coffee companies may

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A/HRC/17/31, annex (Mar. 21, 2011) (stating corporations should act as extensions of society requiring them to respect human rights).

<sup>242</sup> *Id.*

want to work with contracted third parties and authorize them to carry out periodic labor inspections on the plantations on a random basis. These inspections help improve the enforcement of labor standards. They also deliver important messages to both the plantations and coffee workers that labor rights must be respected and protected.<sup>243</sup>

### *iii. Blockchain-Based Supply Chain Tracking System*

Due diligence measures are effective only if companies can accurately monitor their supply chains and identify where labor abuse and exploitation are occurring. An improved traceability system is the key for companies to proactively manage potential and actual negative human rights impacts with which they are involved. It would allow companies to trace the beans back to the plantations where they were produced and identify and assess actual or potential labor issues on the plantations. It would allow companies to perform rapid traceability analysis in crisis situations, such as serious labor rights violations on a particular coffee plantation that supplies beans to the coffee company. It would also enable companies to take immediate action in response to labor issues, thus improving the integrity of their supply chains.

Emerging technologies, such as Blockchain, have great potential to bring enhanced traceability to the coffee industry, helping major coffee companies to remove suppliers and plantations with poor labor standards from the supply chains. Blockchain is a distributed immutable ledger that “stores information that is highly resistant to modification.”<sup>244</sup> As Kyler Massner describes:

[I]nformation is stored on blocks placed into a chronological chain synchronized across multiple computers. While data can be added to the blockchain, no information can be modified

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<sup>243</sup> See *Labour Inspection*, INT'L LABOR ORG., <https://libguides.ilo.org/labour-inspection-en> [<https://perma.cc/M8KP-D6FU>] (noting that inspection helps ensure fairness in workplaces).

<sup>244</sup> Kyler Massner, *New Kid on the Block: How Blockchain Can Improve the United States Food Sector*, 24 DRAKE J. AGRIC. L. 341, 344 (2019).

retroactively or even deleted without alerting the network. These mechanisms make information on the blockchain highly resistant to malicious attacks or data loss.<sup>245</sup>

Blockchain provides a transparent system for data tracking, and it “ensures the integrity of information without centralized control.”<sup>246</sup> With the help of Blockchain, major coffee companies will be able to track where their beans come from. In fact, some coffee companies have already started their Blockchain journey. In March 2018, Starbucks announced that, within the next two years, it “will launch a pilot program with select coffee farmers in Costa Rica, Colombia and Rwanda to develop next-level data technology to log and share real-time information along the journey of coffee beans with the aim of driving positive impact to smallholder farmers within its supply chain.”<sup>247</sup> The “bean to cup” Blockchain-based supply chain tracking system “will allow customers to track the supply chain journey of the beans they buy and the coffee they drink.”<sup>248</sup> Similarly, in July 2019, Nestlé announced that it “will break new ground in supply chain transparency through a collaboration with OpenSC—an innovative blockchain platform that allows consumers to track their food right back to the farm.”<sup>249</sup> Blockchain technology will ultimately change the history of supply chain management in the coffee industry and beyond. It will ensure ethical sourcing and, most importantly, improves labor practices on the plantations.

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<sup>245</sup> *Id.*

<sup>246</sup> *Id.* at 343-44.

<sup>247</sup> *Starbucks to Pilot ‘Bean to Cup’ Traceability with New Technology*, STARBUCKS COFFEE CO. (Mar. 21, 2018), <https://stories.starbucks.com/stories/2018/starbucks-to-pilot-bean-to-cup-traceability/> [https://perma.cc/GS44-3VFV].

<sup>248</sup> Lucas Mearian, *From Coffee Bean to Cup: Starbucks Brews a Blockchain-Based Supply Chain with Microsoft*, COMPUTERWORLD (May 7, 2019), <https://www.computerworld.com/article/3393211/from-coffee-bean-to-cup-starbucks-brews-a-blockchain-based-supply-chain-with-microsoft.html> [https://perma.cc/49QC-EZ8N].

<sup>249</sup> *Nestlé Breaks New Ground with Open Blockchain Pilot*, NESTLÉ (Jul. 2, 2019), <https://www.nestle.com/media/pressreleases/allpressreleases/nestle-open-blockchain-pilot> [https://perma.cc/32A4-MUB4].



Emerging coffee companies have put some effort into improving labor practices on the plantations, although there remains much to be done. This Article recommends that all coffee companies take effective due diligence measures to protect labor rights in their upstream supply chains. Moreover, the breakthrough Blockchain technology should be widely used to enhance the traceability and transparency of the coffee supply chains. Major coffee companies can play an important role in improving labor practices on the plantations and ensuring the coffee industry has a sustainable future.

## V. CONCLUSION

Some of the worst labor rights violations are still happening among farmers and workers on coffee plantations in many developing countries. This is unacceptable. Child labor and forced labor are intrinsically reprehensible and therefore should be prohibited. Meanwhile, as basic human rights, all coffee farmers and workers deserve fair wages and safe working conditions. This research acknowledges that labor problems in the coffee industry are challenging but not completely hopeless; they can be surmounted. However, no individual or individual organization can solve the labor issues in global supply chains on their own, and a single solution approach does not exist. Collective efforts from both the public and private sectors are imperative in order to bring coffee workers and farmers out of the shadows. It is time that the international community, governments of coffee producing countries, governments of coffee consuming countries, major coffee companies, coffee consumers, as well as other interest groups make greater efforts to improve labor practices within their respective competencies.

At the international level, the ILO and other international organizations must work on improving the efficiency of their enforcement mechanisms for labor protection. Meanwhile, given that the WTO is more capable of tackling the labor issues facing the coffee industry, it should consider incorporating labor standards into its legal framework. At the national level, bolstering domestic enforcement efforts would be an effective means of combating labor issues on the plantations. Thus, coffee producing countries must

focus on improving government practices regarding labor protection, although there remain many legal and practical challenges to overcome.

In the private sector, engaging the general public in the monitoring of labor practices is highly recommended. In addition, coffee consumers and major coffee companies also hold tremendous potential to improve global labor practices in the coffee industry. Collectively, consumers can be a powerful market force in creating a robust market for ethically produced coffee. Fair trade can be seen as an important step in the right direction. As for major coffee companies, human rights due diligence measures must be implemented across supply chains. This is particularly meaningful for coffee farmers and workers, who are at the far end of the supply chains. With effective human rights protections, due diligence measures, and strong commitments to improved labor practices, major coffee companies can protect the most vulnerable people in coffee trade.

Although there is a long journey ahead, it is hoped that, ultimately, the world can work together to remove the 'bitterness' in the coffee industry and create a better working environment for coffee farmers and workers around the globe.