



Engagement, remedy & justice:

Priorities for the Corporate Sustainability Due Diligence Directive from workers in the Global South



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Overview

The proposal for a Directive on Corporate Sustainability Due Diligence ('the Directive') seeks to ensure EU companies address human rights and environmental risks across their global value chains. Any successful business needs to engage with workers and their representatives. Not only are workers central to the functioning of the business, they are key rightsholders and social partners directly affected by corporate activities. If the Directive is to deliver on its enormous potential, workers across the EU's global value chains must play a leading role in its development and implementation.

The Business & Human Rights Resource Centre (the Resource Centre) convened workers, trade unions and their civil society partners from a range of jurisdictions in the Global South to discuss the Directive and the extent to which it meets the needs of workers in EU value chains. This briefing amplifies the insights and analysis shared by workers and their representatives at workshops held in Phnom Penh (Cambodia), New Delhi (India), Nairobi (Kenya) and Kampala (Uganda) between November 2022 and April 2023. Case studies are drawn from workshop participants, as well as from the Resource Centre's global team of researchers.

More than 10 years after the publication of the United Nations Guiding Principles on Business & Human Rights, workers and their representatives have been subject to myriad initiatives aimed at defining the role of business in respecting human rights and developing avenues for access to remedy. The emerging trend of mandatory due diligence legislation is to be welcomed as a significant step forward with the potential to materially change the calculus of risk in key EU boardrooms. Nevertheless, participants across all four workshops stressed that workers have spent over a decade engaging with 'corporate social responsibility' processes driven by the Global North which have largely failed to produce meaningful outcomes for workers, or even to acknowledge the key role of workers as stakeholders. They have included the rise of social audits as part of certification schemes and industry-driven sector initiatives. Meanwhile, the fundamentally unequal power dynamic between workers and employing or buying companies remains unchallenged, and workers' rights are under continued threat across many countries supplying the EU.

Participants recognised the need for a new legislative framework and were united in urging that the entire process – from designing the law to enforcing due diligence requirements – must involve workers and CSOs in countries across the Global South. Only then will the Directive meet its central aim of mitigating human rights risks across global value chains.



Key recommendations

This paper lays out **five priority areas**, with supportive recommendations, which participants felt were most vital in ensuring meaningful due diligence legislation which promotes the rights and needs of workers in the value chains of EU companies.

The Corporate Sustainability Due Diligence Directive should:



Recognise workers in value chains as essential to due diligence processes

- **Name workers as a specific stakeholder group** to be consulted and engaged throughout the process of human rights and environmental due diligence.
- **Name and acknowledge the vital role played by independent representative trade unions** in due diligence processes.



Require due diligence across the whole value chain

- **Ensure companies' due diligence responsibilities extend beyond established business relationships** or other limitations of value chain scope, to include informal and subcontracted suppliers.
- **Address the information gap between stakeholders** by requiring companies to conduct and publish mapping of their value chains.
- Ensure companies do not rely on **third party audits**.



Drive sustainable buyer/supplier relationships

- Ensure buyers take responsibility for human rights in their value chains through partnership with suppliers, supported by **responsible contracting and purchasing practices**.



Ensure workers and other rightsholders have access to protection, remedy and justice

- Support the provision of accessible grievance mechanisms, sensitive to dynamics around gender, caste, migration status and ethnic identity, which offer access to justice for rightsholders.
- Guarantee **protection for trade union representatives and human rights defenders**, including whistleblowers and labour rights defenders.
- Ensure **fair access to justice** through a civil liability mechanism in which the burden of demonstrating whether corporate due diligence has been adequate falls on the business rather than the victim.



Include accompanying measures to support effective implementation

- Commit resources to support the participation of workers and civil society groups in due diligence processes.

Priority 1

Stakeholder engagement

How the Directive requires companies to engage with stakeholders was a key focus for workshop participants. Concerns were raised in two main areas: the Directive’s definition of **stakeholder**, and the extent to which companies will be required to meaningfully engage with rightsholders, their representatives, and their allies across civil society in the process of conducting due diligence.

Naming workers as a category of stakeholder

Article 3 of [the Commission’s draft Directive](#) defines stakeholder as “the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships”. This preference for the term employee immediately limits the type of worker covered by the Directive. Participants highlighted that this terminology fails to reflect the reality of garment production, for example, where workers may be on temporary contracts and orders are often subcontracted to the informal sector where workers receive no

benefits and are at higher risk of exploitation. The term employee is outdated and not reflective of the emerging realities of the world of work, in particular the burgeoning ‘gig’ economy.

The European Parliament’s Committee on Legal Affairs’ draft Directive proposes amendments which would strengthen this element significantly by naming “workers and their representatives and the trade unions” as a specific category of affected stakeholder. If the Directive is to lead to robust and effective corporate due diligence, these amendments should be retained and strengthened in the final text.

Informal workers vulnerable to rights abuse

The supply chain workers most vulnerable to abuse often sit outside the narrow definition of *employee* used in the Commission’s initial draft of the Directive. For example, in Indian garment factories only official employees are issued with an identification card, a ration card, and other benefits. Informal workers unable to access these benefits are likely to be poorer and more vulnerable to labour rights abuse.

The Resilience Trust, a labour rights organisation based in Tamil Nadu has highlighted that toilet cleaners working in Indian garment factories, typically drawn from the Dalit caste, are engaged informally by the factory management. They are not on payroll and never have a written contract or permanent terms of employment and are therefore unable to benefit from the Employees’ State Insurance scheme for healthcare and social security.



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Acknowledging representative trade unions

Workers stressed that the Directive should ensure companies take a participatory approach to due diligence which involves close engagement with representative and independent trade unions. Workers are vital partners throughout the due diligence process, not least in their capacity as experts with deep insights into potential and actual risks along the value chain. Effective due diligence demands up-to-date value chain information, which workers are able to provide far more reliably and robustly than methods such as social auditing or industry-led certification schemes. As one Kenyan rights organisation stated: “farms are fatigued by audits”.

Worker groups also pointed to a concerning trend in which government-promoted unions, so-called ‘yellow unions’, and worker committees – themselves often co-opted by company management – are being selected by companies as dialogue partners.

Suppression of freedom of association around the world

[Human Rights Watch](#) reports that independent unions in Cambodia have been subjected to a series of crackdowns making it increasingly difficult to organise and collectively bargain within the garment sector. For example, in Cambodia, the 2016 Trade Union Law [has been denounced by activists](#), who judge it “contains a number of disproportionate restrictions on the rights of unions to conduct their activities freely, and is not consistent with Cambodia’s domestic or international human rights obligations.”

The right to organise in India is similarly embattled. The ITUC [has criticised](#) recent Indian labour laws, suggesting they restrict the right to strike and bargain collectively. In particular, Section 14 of India’s forthcoming Industrial Relations Code provides that if there is more than one trade union in an establishment, then a union which has the support of more than 51% of the workers is recognised by the employer as a sole negotiating union. Labour activists are concerned this provision gives excessive authority to the employer to decide who to negotiate with the light of [union-busting tactics](#) which constrain the ability of unions to gain density.

The Resource Centre’s [October 2022 report](#) on Freedom of Association in the garment industry interviewed 24 trade union leaders and surveyed 124 union activists and labour advocates in Bangladesh, Cambodia, India,

The proposed Directive could miss the opportunity to tackle this trend, and policymakers should close the gap within the current stakeholder definition by specifying independent trade unions as a key rightsholder group to be consulted. Participants were clear that preference should always be given to engagement with independent, democratic and representative trade unions. Identifying and working with representative worker structures may be more complex than engaging with worker committees and may require thorough stakeholder mapping as part of the due diligence process. This is an area where greater clarity from the Directive would be helpful.

By encouraging meaningful dialogue with unions, the Directive could serve to bolster freedom of association, as well as promote good practice around worker dialogue and consultation, including Global Framework Agreements and collective bargaining at a local level.

Indonesia and Sri Lanka, with nearly two thirds (61%) of survey respondents reporting the situation for freedom of association and collective bargaining has worsened since the pandemic. Almost half of respondents revealed an increase in discrimination, intimidation, threats and harassment of trade union members. The report highlights allegations of union-busting and related abuse at 13 factories. These factories supply, or have recently supplied, at least 15 global fashion brands and retailers including a number based in the EU.

The Resource Centre’s tracking of allegations of labour rights abuses in Myanmar’s garment industry has also highlighted a worrying trend of worker’s committees being convened by factory management and favoured over independent unions. Inevitably, these committees are unable or unwilling to effectively represent workers. [One garment worker said of the committee leadership](#), “[it] looks like it is chosen by the workers, but in fact, they are not allowed to choose the leader they like. The three chosen are those who are on the employer’s side.” [Other workers have reported](#) “their solutions to the grievances of the workers are not good and they are not on the side of the workers...This is almost every factory”. Since June 2022, [the Resource Centre has reached out to 50 international buyers](#) to request their response to allegations of abuse in their Myanmar supply chains. On 13 separate occasions, brands have disputed the allegations using only information gleaned from factory owners or management.

Priority 2

Due diligence across the whole value chain

The Directive should require companies to carry out due diligence assessments of their whole value chain, including informal or subcontracted suppliers, which are often used in the garment sector. Subcontracted work is more frequently conducted by vulnerable workforces discriminated against because of gender, caste, ethnic identity or migration status.



Extending due diligence responsibilities beyond established business relationships or other limitations of value chain scope

Businesses should be required to take a risk-based approach to due diligence, as outlined by existing UN and OECD standards and [guidance](#). The shift by both the European Parliament and European Council away from the European Commission's position of requiring businesses to conduct due diligence in only their established business relationships is welcome. Workshop participants stressed the importance of maintaining this shift. Indeed, participants noted that by restricting due diligence requirements to supply chain relationships of a certain length or intensity, the Directive could risk perversely incentivising businesses to maintain only temporary relationships with suppliers in order to minimise their own due diligence requirements.

The Directive should stress that robust human rights due diligence is easiest in value chains with long-term relationships, given these are more often characterised by greater predictability of orders, investment in suppliers and an enabling environment for employers to guarantee workers decent wages and a safe working environment.

The requirement to conduct due diligence of the entire value chain should apply not just to companies, but to EU financial actors which – via their investment relationships – may be linked to human rights or environmental abuses. The Directive currently applies unevenly to financial actors, requiring them to conduct due diligence only in relation to their direct clients and not to look at the broader value chain.

Labour rights abuses in informal parts of the value chain

Homeworkers, subcontracted by factory managers, are a significant feature of many Indian garment value chains. [Research from the University of California, Berkeley, in 2019](#) studied the integral role played by homeworkers in embellishing, embroidering and beading garments for export. Of 1,492 homeworkers documented by researchers, close to 100% “toiled in conditions of forced labour under Indian law”. [Human Rights Watch research](#) has uncovered that small factories in Cambodia often act as informal subcontractors for larger factories. Human Rights Watch reports that workers in these factories don’t have identity cards and said they didn’t know whether their workplaces were registered with the National Social Security Fund, which provides health insurance to the workforce.



Publishing supply chain information

Participants highlighted the current information gap between companies and civil society organisations as a key obstacle in holding business to account. The Directive should require companies to provide all stakeholders with the information needed to fully engage in constructive dialogue and due diligence processes. Transparency is vital if workers, their representatives and civil society allies are to link rights abuses in the supply chain to buyers and their purchasing practices. Proactively publishing corporate information – including thorough stakeholder mapping, participatory risk assessments, audit reports and corrective action plans – is a key mechanism through which companies can work towards realising their responsibility to respect human rights.

No reliance on third party audits

The draft Directive from the European Parliament’s Committee on Legal Affairs still promotes the use of independent third-party verification and multi-stakeholder initiatives. Although it importantly stops short of assigning these as ‘safe harbours’, exempting companies using them from civil liability, the emphasis nonetheless risks encouraging EU companies to rely on these imperfect solutions which, [as research from SOMO has amply demonstrated](#), can only ever be an element of, rather than a proxy for, robust due diligence.

Priority 3

Sustainable buyer/supplier relationships

Given the stated aim of the Directive to identify and mitigate human rights and environmental risk across supply chains, workers called for a heightened focus on the relationship between suppliers and buyers, and stressed the profound impact these relationships have on workers' rights. To approach due diligence as a policing and monitoring exercise alone misses a key driver of human rights abuse: poor supply chain relationships. These are characterised by power dynamics skewed in favour of the buyer and low levels of supply chain investment. As one delegate at the New Delhi workshop said: "there is an existing power structure and if the Directive is not addressing this power structure, things won't change".

Partnership and contracting practices

The Directive should provide a framework which requires businesses to invest in supporting human rights in their supply chains, ensuring the burden of mitigating abuse is left not to smaller supplier businesses but is rather shared equitably. However, the [European Commission's initial draft Directive](#) allows for the responsibility to respect human rights to be transferred down the supply chain via contractual clauses. This is a dangerous precedent. Wealthy brands, whose purchasing practices shape the dynamics of their supply chains, should be jointly responsible for human rights in their supply chains. This is better addressed in the draft Directive produced by the European Parliament's Committee on Legal Affairs, which introduces new language requiring businesses to adapt their strategies and use purchasing policies which do not lead to adverse

impacts on human rights. This revision should be reflected in the final Directive.

Another dimension of responsible contracting is how brands respond when rights abuses are uncovered. Participants in the workshop in Cambodia repeated the message for international brands: "don't run away". When human rights abuses come to light it shouldn't be supply chain workers who pay with their jobs. Rather, companies should engage with their suppliers, as well as with workers and civil society groups, to mitigate the risk of abuse and invest in corrective action and sustainable supply chain relationships. In extreme cases in which adequate human rights due diligence is not possible, [international guidelines are clear](#): any disengagement should be conducted responsibly to ensure that human rights are not placed at further risk.

Irresponsible disengagement

The November 2012 fire at the Tazreen factory in Bangladesh killed 117 garment workers, injuring over 200 more. Disney products were found in the wreckage, although [the company denied knowledge of their supply chain links with Tazreen](#) and did not join the scheme to compensate affected families. A few months after the fire, Disney decided to [completely cease any Bangladeshi production](#).

Purchasing practices

The Directive should require brands, in the process of conducting due diligence, to assess the impact their own purchasing practices have on rightsholders in their supply chains. The result of irresponsible purchasing practices was demonstrated starkly during the Covid-19 pandemic, when [brands cancelled orders, demanded lower prices and imposed longer payment terms](#), all of which had devastating implications for workers.

Buyers must compensate suppliers fairly if they are to invest in safe working environments, ensure environmental standards are met, and pay workers decent wages. Buyers cannot rely on legislation in sourcing countries to ensure worker rights are met and instead should take steps to ensure the price paid for goods and services is sufficient to cover decent wages for workers, social security costs and health and safety requirements in the supply chain. As one participant said: “Due diligence is a band aid only if purchasing practices aren’t included”.

Longer-term irresponsible purchasing practices in garment supply chains

[Pennsylvania State University’s study](#) of conditions in Bangladeshi garment factories before the pandemic, covering 2013 – 2018, concludes “gains have been severely limited in regard to wages, overtime hours, and work intensity in part due to the sourcing practices of the brands and retailers that sit at the top of global supply chains”. These sourcing practices worsened at the onset of the Covid-19 pandemic, with [an estimated \\$3.18 billion of clothes orders](#) from Bangladesh cancelled.



Priority 4

Grievance mechanisms and access to protection, remedy and justice

Effective grievance mechanisms

Human rights due diligence must include the provision of mechanisms through which the grievances of workers and other affected rightsholders can be safely raised and addressed.

Article 9 of the European Commission's draft Directive requires that "Companies should provide the possibility for persons and organisations to submit complaints directly to them". This should be strengthened to require that companies take steps to guarantee the provision of effective complaints mechanisms, which include protection for complainants and lead to remedy. The effectiveness of complaints mechanisms have been found [by Nomogaia and the University of Warwick to vary significantly](#). The Directive should learn from [the shortcomings of existing approaches](#) and provide for complaints mechanisms which are sensitive to dynamics around gender, caste and migration status, and which workers are capacitated to use.

Protection for trade union representatives and human rights defenders

A Directive which provides for workers to raise grievances must also guarantee those workers are afforded protection. Almost half of the 148 union leaders and activists [interviewed by the Resource Centre in 2022](#) reported an increase in intimidation, threats and harassment owing to their roles. As initially drafted by the Commission, the Directive merely extends the [EU's Whistleblower Protection Directive](#) to those raising breaches of the Directive. However, this would mean protection only for

employees, suppliers and others with a formal professional relationship with the company. The non-retaliation requirements in the amendments proposed by the European Parliament's Committee on Legal Affairs covering grievance mechanisms and meaningful engagement with affected stakeholders represent important progress. However, their effectiveness is compromised by [weakened references to human rights defenders as affected and legitimate stakeholders](#) in the Directive's text and annex.

Fair access to justice

The Directive should ensure victims of corporate abuse are able to access justice and judicial remedy via a civil liability mechanism through which the burden of demonstrating whether corporate due diligence has been adequate falls on the business rather than the victim. As it stands, the European Commission's draft Directive leaves the question of 'burden of proof' to the national law of the various EU Member States.

If victims continue to shoulder the burden of proof, workshop participants were highly sceptical that the Directive would provide an effective means of holding companies to account.

Priority 5

Implementation and accompanying measures

“The answer to ensuring workers are protected across supply chains is not necessarily a proliferation of more frameworks and initiatives, but rather a focus on implementation”

Kenya workshop participant



Workers and civil society groups in the workshops expressed a weariness with the number of initiatives and frameworks which have been imposed on them by actors in the Global North. The success of the Directive, with its welcome shift from voluntary to mandatory requirements for EU-operating companies, will hinge not just on how it is designed and drafted, but how vigorously its provisions are implemented.

Participants in each of the four workshops highlighted that the participation of workers and civil society groups will be integral to this implementation. The involvement of workers,

unions and civil society allies in corporate due diligence processes, as highlighted above, will be vital. However, the European Union should also consider what resources are needed to guarantee the effective participation of such groups.

Article 14 of the European Commission’s proposed Directive includes provisions for “accompanying measures” through which EU countries may provide support “to help companies fulfil their obligations”. This approach should be extended to support workers, their trade unions, defenders and civil society organisations operating in the value chains of EU companies.



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