



# Event Summary

## Mandatory Human Rights Due Diligence

### Risks and Opportunities for Workers and Unions

#### Talks by:

**Jeff Vogt**, Rule of Law Director, Solidarity Center & **Ruwan Subasinghe**, Legal Director, International Transport Workers Federation

**Heidi Hautala**, Vice President of the European Parliament

**Isabelle Schömann**, Deputy General Secretary, European Trade Union Confederation

#### Event Organizers:

**Associate Professor Shelley Marshall**, RMIT University

**Dr Ingrid Landau**, Monash University

**Professor Hila Shamir**, Tel Aviv University

**Dr Tamar Barkay**, Tel Hai College

**Professor Judy Fudge**, McMaster University

**Auret van Heerden**, Equiception

**Renée Burns**, RMIT University

# Event Summary:

## Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers and Unions

Full event details and recording are available [here](#).

### Introduction

Human rights due diligence (HRDD) has gained significant traction in the past decade, emerging as a crucial concept in the realm of corporate social responsibility. The number of OECD countries adopting mandatory human rights due diligence (mHRRD) laws continues to grow. However, these laws differ significantly in the scope of rights they protect, the obligations they impose on businesses, and the businesses to which they apply. As such, it is imperative to critically examine the effectiveness of existing HRDD laws and explore avenues for improvement.

This blog post delves into the insights shared by speakers in the ‘Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers and Unions?’ round table held on 5 June 2023, to launch a new report about the topic (the report is available [here](#)).

### Contents

<b>Enhancing Human Rights Due Diligence Laws: A Call for Change</b>	<b>2</b>
Jeff Vogt & Ruwan Subasinghe	
<b>Shaping Global Standards: A Step towards Protecting People and the Planet</b>	<b>4</b>
Heidi Hautala	
<b>The Importance of Trade Unions and Workers’ Rights in Ensuring Responsible Business Conduct</b>	<b>6</b>
Isabelle Schömann	
<b>The Risks and Opportunities of Mandatory Human Rights Due Diligence</b>	<b>8</b>
Ingrid Landau	

# Enhancing Human Rights Due Diligence Laws: A Call for Change

## Talk by Jeff Vogt, Rule of Law Director, Solidarity Center & Ruwan Subasinghe, Legal Director, International Transport Workers Federation

Jeff and Ruwan joined the roundtable from the International Labour Conference in Geneva, and in their talk emphasized the need for comprehensive reforms in HRDD legislation. Below is a summary of their talk.

### The Current State of HRDD

Jeff Vogt, Rule of Law Director, Solidarity Center, opened by commending the authors of the [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) report for shedding light on the essential aspects of HRDD. He highlighted a concerning trend wherein many companies' HRDD plans have been superficial, process-oriented, and developed without meaningful engagement with workers and trade unions. While HRDD presents opportunities for dialogue and prevention, its effectiveness in delivering justice has been mixed, as evidenced by the lack of successful transnational labour rights cases reaching a final judgment.

### Shortcomings in Existing Laws

Jeff drew attention to the French *Corporate Duty of Vigilance Law*, despite its mandatory nature, the plans outlined by companies under this law often lack clarity, fail to map supply chains effectively, and provide inadequate detail on preventing and mitigating risks for workers. Furthermore, the French courts' hostility towards labour rights claims filed under this law highlights the challenges faced by workers seeking justice. These limitations underscore the need for comprehensive reform.

### The Impact of COVID-19

The COVID-19 pandemic served as a stress test for the HRDD paradigm, revealing its shortcomings. The cancellation crisis, where companies refused to pay for completed orders, demonstrated the inadequacy of HRDD in addressing adverse impact on workers and unions. Additionally, the COVID-19 pandemic was used by some supplying businesses as an opportunity for 'union busting'; exploiting to contraction of demand to target unionized factories for closure. These incidents underscore the necessity for an HRDD approach that recognises all human rights, including labour rights.

### Access to Justice and Remedies

Jeff emphasized the critical importance of access to justice and highlighted limitations in the current framing of HRDD. Having been shaped with incidents such as the Rana Plaza disaster in mind, the current approach to remedy under mHRDD laws is formulated to respond to quantifiable harms, such as death and injury. He argued that compensatory damages alone do not suffice in addressing the broader range of human rights impacts faced by workers, such as violations of their right to free association by way of 'union busting'. To adequately address these harms, a broader set of remedies should be available. Effective access to justice under mHRDD laws also requires revisiting burden of proof issues and ensuring workers' access to information during litigation. Jeff highlighted that absent

a right to discovery and information workers in the Economic South faced extreme difficulty meeting the burden of proof in litigation against transnational corporations.

### HRDD and Freedom of Association

Jeff concluded by highlighting that corporate social responsibility (CSR) and HRDD practices have in many ways operated as substitutes for freedom of association and collective bargaining. He argued that for HRDD outcomes to be sustainable and effective, they must encourage private sector union growth, and collective bargaining agreements capable of determining the terms and conditions of work across supply chains.

### Expanding HRDD Scope – A Seafaring Case Study

Ruwan Subasinghe, Legal Director, International Transport Workers Federation (ITF), contributed to the discussion by emphasizing the need to reflect on which sectors are categorised as high risk to expand the scope of rights covered under HRDD legislation. Citing Seafarers as an example Ruwan stated that transport workers are often overlooked in HRDD risk mapping exercises. He went on to describe the prevalence of underpayment within the sector, and seafarer abandonment, giving rise to situations of forced labour. For mHRDD laws to be effective in the case of maritime transport workers, Ruwan recommended shipping be categorised as a high-risk sector. Ruwan also argued that for these high-risk sectors the scope of mHRDD laws should extend beyond the *International Bill of Human Rights* and the *ILO Declaration on Fundamental Principles and Rights at Work* to include sector specific ILO Conventions. In the case of Seafarers, he suggested incorporating the *ILO Protection of Wages Convention, 1949 (No. 95)*; and the *ILO Work in Fishing Convention, 2007 (No. 188)* with respect to that sector.

### Stakeholder Engagement as an enforceable right

Ruwan went on to stress the importance of meaningful stakeholder engagement – particularly the involvement of local, regional and international trade unions – to ensure effective risk mapping and implementation of HRDD. Ruwan emphasised the importance of framing stakeholder engagement as an enforceable right, as recommended by [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) report.

### Complementary Civil Liability Regime

Ruwan echoed Jeff Vogt's observations about the difficulties workers faced litigating claims under existing mHRDD laws, describing a reversed or shifting burden of proof and access to information as crucial for workers seeking justice. Ruwan went on to argue, absent a complementary civil liability regime, separate from the obligation to conduct HRDD, mHRDD laws could be meaningless. Ruwan described the difficulties faced by the ITF bringing cases under the French *Corporate Duty of Vigilance Law*, which restricts civil liability to harms resulting from a company's failure to comply with its vigilance obligations, ie. to publish an annual 'vigilance plan'.

### Conclusion

The discussions by Jeff Vogt and Ruwan Subasinghe shed light on the shortcomings of existing mHRDD laws and offer valuable insights into the necessary changes. Reforms should focus on enhancing worker engagement, expanding the scope of rights covered by HRDD laws, ensuring access to justice and remedy through a comprehensive civil liability regime.

# Shaping Global Standards: A Step towards Protecting People and the Planet

## Talk by Heidi Hautala, Vice President of the European Parliament

Heidi Hautala highlighted the importance of labour unions and workers' representatives in shaping the EU proposed directive on Corporate Sustainability Due Diligence. With a focus on the public interest and the rights of people and the planet, VP Hautala expressed her enthusiasm for establishing a global standard. Below is a summary of the key points from her speech and emphasizes the significance of this proposed legislation.

### Labour Unions and Stakeholder Engagement

VP Hautala acknowledged labour unions as key stakeholders in the legislative process. She stressed their involvement in shaping the proposal and recognized the collaborative efforts of progressive companies, environmental organizations, human rights advocates, and others. By engaging various stakeholders, VP Hautala believes that a comprehensive and effective framework can be developed to address global concerns.

### The Imperfect Yet Promising Proposal

VP Hautala acknowledged that while the proposal is incomplete and imperfect, she emphasized its potential as a powerful tool for advancing the public interest. She expressed her eagerness to work towards a binding global instrument and believed that the EU is well-positioned to lead this effort. Hautala encouraged the EU to engage actively and leverage its domestic legislation as a foundation for promoting their views and setting global standards.

### Key Elements of the Proposal

VP Hautala highlighted several essential elements of the proposal.

**Access to justice and remedy:** VP Hautala acknowledged the challenges faced by workers and their representatives in obtaining justice. The proposal includes measures to reduce inequality in potential court cases, such as extending statutory limitation periods to a minimum of 10 years and improving access to information through court processes for impacted parties.

**Meaningful stakeholder engagement:** VP Hautala described meaningful stakeholder engagement as a crucial aspect of the proposed legislation, emphasising the value and relevance of workers and their representatives in shaping decisions that impact their rights and working conditions. The EU's position solidifies the importance of information, consultation, and participation rights for workers, aiming to strike a balance between stakeholder interests.

**Alignment with International Standards:** VP Hautala emphasized the need to align mHRDD with existing international standards specifically referring to the *UN Guiding Principles on Business and Human Rights* (UNGPs). By aligning with these principles, the EU aims to defend and promote human rights globally. She acknowledged the guidance provided by Professor John Ruggie and emphasized that the proposed legislation builds upon existing international norms rather than reinventing the wheel. VP

Hautala noted only three sectors – textiles, agriculture and mining – were identified as ‘high-risk’ under the proposal in alignment with the *OECD Due Diligence Guidance for Responsible Business Conduct*.

### The Path Ahead

VP Hautala concluded her speech by expressing her optimism about the outcome of the legislative process. She stressed the importance of ensuring that the benefits of this legislation extend beyond European borders to the producer countries, calling on EU Member States to support the implementation of HRDD at all levels of supply chains. Finally VP Hautala emphasised, as a key pillar of the UNGPs, access to justice and remedy is essential for effective HRDD, and closed by thanking the trade union movement for its active involvement and expressing hope for a collaborative effort to maximize the potential of this legislation.

### Conclusion

Heidi Hautala’s speech highlighted the significance of the proposed legislation in advancing the public interest and protecting the rights of people and the planet. While acknowledging its imperfections, Hautala emphasized the potential of the proposed legislation to establish a global standard by engaging various stakeholders and aligning with international norms. The proposed legislation aims to promote due diligence, meaningful stakeholder engagement, and access to justice, reflecting a commitment to building a fairer and more sustainable future. As the legislative process unfolds, the EU’s active engagement and collaboration with global partners will be crucial in realizing the full potential of this initiative.

# The Importance of Trade Unions and Workers' Rights in Ensuring Responsible Business Conduct

## Talk by Isabelle Schömann, Deputy General Secretary, European Trade Union Confederation

Isabelle Schömann highlighted the significance of trade unions and workers' representatives in shaping responsible business conduct. She noted the evidence and recommendations advanced by the [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) would be a valuable tool for the union movement in pushing for legislative frameworks to protect workers' rights, ensure sustainable practices, and promote social justice.

### Ensuring Accountability and Transparency

Isabelle Schömann acknowledged the collaboration between trade unions, the European Parliament, and member states in advancing the EU proposed directive on Corporate Sustainability Due Diligence. The proposed directive will ensure the availability of information about business supply chains for investors, workers and communities that goes beyond financial concerns to issues of sustainability. Additionally, the proposed directive will help the union movement to better monitor and respond to labour rights violations within supply chains.

### Worker's Rights are Human Rights

Isabelle offered that the proposed directive is important as it presents a unique opportunity to establish a regulatory foundation, aligned with international standards, to reinforce the status of trade union and workers' rights as human rights. She emphasised the value of worker voice in business planning and decision-making, stressing that worker involvement is crucial for those processes regarding human rights and sustainability.

### Prevention and Access to Justice

The proposed directive aims to prevent human rights violations in transnational supply chains. Schömann highlighted the importance of this preventative approach for risks to workers' health and safety. Arguing however, where harm has occurred, it is equally important that victims have access to justice and remedy through effective civil liability schemes.

### Supply Chain Responsibility

Schömann stressed that HRDD should commence at the top of the supply chain, that is within the European Union itself. By addressing exploitative practices and resource exploitation within supply chains, the legislation aims improve health and safety, and social protections for workers at every level of the supply chain.

## Addressing the Role of Business

The speech emphasized the interconnectedness of various legislative measures concerning the environment, business and competitions practice, social responsibility and sustainable production. Together, these measures highlight the role and responsibilities of business to secure workers' well-being and fair compensation, to ensure businesses contribute positively to society, and to tackle issues such as social dumping, unethical business practices. Trade unions and workers' representatives must play a key role in shaping and enforcing these laws.

## Strengthening Workers' Rights

Schömann acknowledged the work of the European Parliament around HRDD noting there remains work to be done around strengthening the rights of workers. She called for strengthening workers' rights to information and consultation, stressing that the right to collective bargaining is key to ensuring effective HRDD and business sustainability.

## Conclusion

Isabelle Schömann's speech highlighted the critical role of trade unions and workers' representatives in shaping responsible business conduct. The proposed legislation in Europe presents a significant opportunity to establish a regulatory framework that safeguards workers' rights and ensures sustainable business practices. By emphasizing prevention, access to justice, and supply chain responsibility, the legislation aims to address exploitative practices and create a fair and equitable business environment. The collaborative efforts of trade unions, the European Parliament, and member states are essential in enacting and enforcing these laws to make a positive impact both in Europe and globally.



# The Risks and Opportunities of Mandatory Human Rights Due Diligence

## Talk by Ingrid Landau, Senior Lecturer, Monash University

Ingrid Landau, Senior Lecturer, Monash University and co-author of the [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) report described the motivation for writing the report as concern over the trajectory of due diligence legislation, and with the presumption that further legalisation of human rights due diligence will necessarily improve conditions for workers. Ingrid acknowledged the momentum behind HRDD legislation and positive impact of existing laws in shifting acceptance and understanding of corporate responsibility within supply chains, but argued there is little evidence to suggest that mandatory human rights due diligence laws are actually benefiting workers.

### Risk Inherent In Process Oriented HRDD Law

As currently formulated, Ingrid observed the HRDD laws tend to prioritise process over outcome, fail to establish appropriate regulatory structures, and fail to address key barriers to workers seeking remedy for human rights abuse in transnational supply chains. Moreover, Ingrid highlighted the risk that in failing to challenge existing business practices, MHRDD laws could serve to endorse managerial determinism and ineffective social auditing practices in this space.

To be truly effective Ingrid emphasised the need for approaches that recognise workers as active agents of change, protect their rights, and create spaces for them to organise and engage in collective negotiation and collective enforcement of context-specific and dynamic labour rights and standards.

### Opportunities for Meaningful Change

The [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) offers 27 recommendations for legislating HRDD so as to drive meaningful change for workers.

#### **Broad and consistent scope**

Primarily Ingrid highlighted the need for HRDD law to adopt a consistent scope of rights, encompassing the United Nations Guiding Principles on Business and Human Rights (UNGPs), the OCED Due Diligence Guidance for Responsible Business Conduct, and the ILO fundamental labour rights, including freedom of association and the right to collective bargaining. Further, Ingrid called for a consistent approach in terms of the types of companies subject to HRDD law, and the necessary reach of HRDD law throughout transnational supply chains.

#### **Increased transparency and accessibility**

Ingrid described the need for HRDD law to secure greater transparency and accessibility of corporate supply chains. A worker-centred approach to human rights due diligence depends on understanding the structure of a supply chain and knowing the identity of the business throughout that structure. The [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) report advocates a number of general and sector specific obligations for improving supply chain mapping and transparency.

#### **Meaningful worker engagement**

Ingrid called for HRDD law to include enforceable obligations on companies to consult with workers, and trade unions within their supply chains, at all stages of the due diligence process. In this context the [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) report envisages a

fundamental role for worker-led binding and enforcement agreements at both the single and multi-enterprise level.

### **A positive duty to respect human rights and access to remedy**

Ingrid called for the imposition of a positive, and non-delegable duty on companies to respect human rights and to ensure no harm occurs through their operations or supply chains. A failure to discharge such a duty would result in obligations to remedy harm and, in certain circumstances, give rise to civil liability.

Ingrid spoke of the practical and legal barriers workers face in bringing claims for human rights breaches occurring in transnational supply chains. In light of these challenges, the [Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers](#) makes a number of recommendations to reduce cost and improve access to remedy for workers.

One such recommendation is that claims be subject to a shared burden of proof where, on establishing a prima-facie case, the burden shifts to the defendant to demonstrate they took all reasonable measures to prevent the harm in question. The report also advocates for the recognition of joint and several liability enabling the liability for harm to be distributed to contributing parties throughout a supply chain.

### **Appropriate regulatory infrastructure**

Finally, Ingrid spoke of the need to establish appropriately resourced support for HRDD law, in the form of state-based oversight and supervisory mechanisms, complemented by processes for receiving worker complaints. She spoke of the need for supervisory bodies to be independent, appropriately skilled, adequately funded and sufficiently empowered to investigate allegations, and to impose a wide range of sanctions including administrative action, penalties and enforceable undertakings.

### **Conclusion**

In conclusion, Ingrid warned against viewing human rights due diligence as a panacea for preventing labour rights abuses or holding companies accountable for harms caused urging the law be complemented by alternative approaches like worker-driven sectoral bargaining and worker-driven social responsibility agreements. She argued the true benefit of HRDD law lies in its potential to create opportunities for workers and trade unions to challenge corporate practices and access remedy.