

Trade unions

key partners in Access to Remedy



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Trade unions, key partners in Access to Remedy

The value chain of palm oil, while offering opportunities for local economic development, can be challenging for human and, especially, labour rights. Large and prominent business companies within the sector have a considerable impact on the compliance of rights of various stakeholders in the palm oil sector, including employees, contract workers and communities. Unfortunately, it has been demonstrated that in practice, workers may not always be able to freely bargain with employers for improved working conditions. And labour rights policies in palm oil producing countries are often inadequately enforced. Hence a number of human rights abuses in the sector, e.g. unpaid overtime, discrimination based on gender or ethnicity, workplace accidents, health and safety hazards, sexual and verbal assaults, and forced labour.

According to a number of (inter)national directives on business and human rights, workers that are victims of labour rights violations, have the right to access to remedy. This includes, for instance, financial remediation, as well as other forms of remedy, such as measures to prevent future harm, but also punitive sanctions to the company held responsible for these violations.

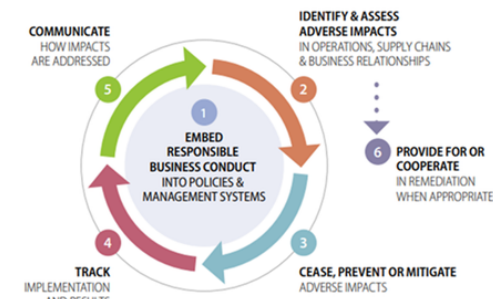
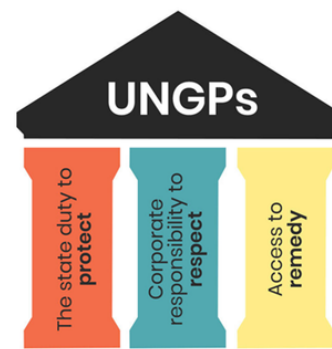
Access to remedy should be provided by value chain actors that are not only causing the harmful operations but also directly linked or contributing. According to the Linkage of Involvement Framework [1] on Access to Remedy , whenever a business enterprise has caused or contributed to an adverse human rights impact, it should actively be engaged in its remediation, whether by itself or in cooperation with others.

Unfortunately, experience has taught that voluntary adoption of existing due diligence measures isn't sufficient and has led to the emergence of a new international regulatory environment. Mandatory Due Diligence legislation is being prepared and implemented, to ensure that businesses comply with their responsibility to fully respect workers' rights. Access to Remedy is at the core of these new laws and regulations, as it is already included in the non-binding UN Guiding Principles and OECD Guidelines. Everyone in the value chain must be ready to play their part in this new chapter. Compliance with this forthcoming international Due Diligence legislation will only be possible if stakeholders in the palm oil supply chain actively collaborate with each other.



Whether adopted voluntarily or made legally binding, certain key elements are essential for effective access to remedy. Trade unions are, and should be, a central actor in all these elements. Unfortunately, in many producing countries, trade unions are not welcome in factories or plantations and in over 100 countries workers are excluded from their right to establish or join a trade union [2]. This makes it hard for workers to understand what their rights are, as these rights are usually addressed and recorded through transparent social dialogue, such as collective bargaining agreements (CBAs). Consequently, it becomes practically impossible for workers to address labour rights abuses.

In an ideal situation, a complaint about labour rights abuse is dealt with through local workplace conflict resolution mechanisms and resolved through social dialogue. But wherever trade unions are non-existent, social dialogue is not taking place, or may not be transparent, increasing the uncertainty of conflicts. Trade unions are bridges between workers and companies, addressing issues before they escalate into formal grievances. This approach enables fair remediation for workers and their families affected by labour rights violations in a relatively fast and easy way. The importance of raising issues through social dialogue has been confirmed by preliminary results of a research conducted by CNV Internationaal in Indonesia. Complaints concerning labour rights issues such as payment below minimum wage, contractual status of casual workers, severance payments and employment termination as non-compliance to CBAs, have all been raised, and therefore addressed through social dialogue.



Source of pillars: Human Rights - From Pillars to Pyramids – Sustainability Business Consultants – BRODIE (brodiepartners.com)

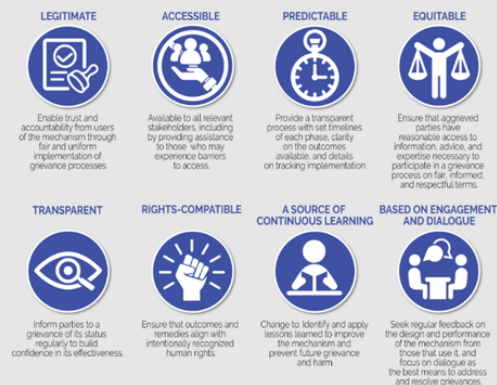
Source of steps: Due Diligence | OECD Guidelines | National Contact Point OECD Guidelines [TS1], [SC2] Ik weet niet of je zomaar deze afbeeldingen mag gebruiken om te publiceren? [TS1], [TS1]

(Human Rights) Due Diligence, OECD Guidelines and Access to remedy:

Due diligence is a continuous process to help enterprises identify risks relating to human rights, labour rights and the environment, with a view to ending, preventing or mitigating those risks. Due diligence is an essential element of international responsible business conduct and is a key theme of the internationally endorsed OECD Guidelines for Multinational Enterprises (2011)[1], which are recommendations from governments to multinational enterprises on how to do business in a sustainable and responsible[2] way; it is also the third pillar to the United Nations Guiding Principles (UNGPs) (figure 1). Due diligence, also known as supply chain responsibility, encompasses access to remedy as a part of the due diligence process —step 6 (figure 2): ‘Provide for or cooperate in remediation’. It concerns providing the opportunity for victims of abuse to seek redress from a company that caused or contributed to the abuse[3].

However, if no solution can be found locally, trade unions, with the support of their own (international) network, could help workers to raise the complaint to the international level, e.g. via OECD National Contact Points (NCPs), the RSPO's complaints system, or other legislative or non-legislative mechanisms. It serves as a safety net when local solutions cannot be reached. However, it also acts as a proper way to grasp and address structural problems in certain sectors and countries. The process of international grievance mechanisms of companies or multi-stakeholder initiatives is often very lengthy, and inaccessible to individual workers due to its complexity and the financial burden.

Effective Grievance Mechanisms Are



Source: Pinning Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned. Harvard Kennedy School Corporate Social Responsibility Initiative, May 23, 2011.

Grievance mechanisms and National Contact Points:

A grievance mechanism is a formal complaint process accessible to individuals, employees, communities, or civil society organisations that face possible unseen, yet negative impacts from specific business activities or operations. They may also be referred to as ‘complaint procedures’, ‘redress systems’, or ‘accountability mechanisms[1]. They may put in place either by businesses or individual plantations operating in the sector, or by governments or other institutions, such as the National Contact Points (NCPs). It is actually a requisite for governments that adhere to the OECD guidelines[2], or to the RSPO complaints mechanism. A proper grievance or complaint mechanism should at least abide by the following standards in order to ensure its transparency and accessibility.

The RSPO Conflict Resolution Mechanism (CRM) stands as an alternative for these mechanisms. It can be considered capable compared to the UNGP’s criteria (2021), though it is sometimes criticised regarding accessibility, processes, and monitoring. A study assessing the RSPO CRM [3] reveals that it is not easily found and accessible for communities due to complexity and information requirements, thus discouraging its use. Because of the risk of harassment or retaliation, the complainant’s identity should be protected and anonymity should be guaranteed when requested. Additionally, some of the cases should have earlier been noted during audits by the auditor. Consequently, the RSPO CRM falls short in delivering justice to rural communities, sustaining conflicts over, for instance, land rights. The complexity of the mechanism also makes it less popular among communities, who prefer alternative conflict resolution methods[3]. Although the backlog of cases has been diminished since 2017, the complaints panel could use more support to ensure fast handling of the cases can continue. On the other hand, governmental mechanisms such as labour inspections are not conducted adequately enough to identify labour rights violations, enabling violations to continue under the radar. Manpower offices or the ones in charge of conducting the inspections have structural funding issues, leading to a reduced workforce or inadequate training of personnel to conduct the inspections and enforce (inter)national labour laws, undermining the accountability of businesses and the legal framework that is in place.





Urgent improvements are needed, in order to ensure just access to remedy. The current situation allows for human and labour rights issues to persist, without providing proper remediation, causing harm to those who are most essential in the supply chain. Trade unions are crucial for effective remediation in global supply chains. CNV Internationaal, with its network of local and national trade unions, can support social dialogue with all relevant stakeholders to effectively resolve conflicts accordingly. CNV Internationaal therefore sends them a call to action, essentially for improving the enabling environment for freedom of association where needed and conducting social dialogue in a fair and transparent way, as we are not able to do this alone.

Freedom of Association:

'Freedom of Association (FoA) is the right of workers to join and form trade unions or organizations of their choosing. FoA is enshrined in the Universal Declaration of Human Rights. It includes the right to freedom of assembly, association, and trade union membership.

Social Dialogue:

The consultation between trade unions, employers and governments on socio-economic issues is called social dialogue. Social dialogue includes all forms of negotiation (such as collective bargaining). But consultations and the exchange of information on socio-economic topics are also forms of social dialogue.



Call to action towards: EU and National Governments

As most businesses have not yet voluntarily adopted HRDD in their policies and violations of human rights persist, more binding measures are needed. The governments of the Netherlands, the EU, and beyond play a crucial role in establishing and adopting ambitious and effective legislation related to international corporate social responsibility. This is essential in order to make sure labour rights are respected in the value chain of products entering the European market. Therefore, CNV Internationaal strongly urges the EU and other national governments to:

Approve ambitious Due Diligence related legislation:

Proposed legislation should be adopted as soon as possible. At this moment multiple proposals —e.g. regulation on banning products made with forced labour from entering the EU market[1], and ‘Corporate Sustainability Due Diligence Directive’[2]— are still being drafted and up for debate. While these proposals include aspects of the OECD Due diligence guidelines, they can be made more ambitious by representing the guidelines even better/more precisely, such as for example the Norwegian Transparency Act. By approving and wholeheartedly embracing the OECD guidelines to the fullest within the legislation, trade unions will be able to better support their workers, as there would now be an assurance that access to remedy is available when needed. Implementing the OECD guidelines is an assurance that complying to the legislation will not just be simply ticking off boxes, but that businesses are actively engaged and committed.

Ensure that Freedom of Association and Social Dialogue is embedded into legislation:

It is essential that Freedom of Association and Social Dialogue become integral aspects of the legislation. Safeguarding this ensures and recognizes the important role of trade unions. Incorporating these elements will not only ensure that access to remedy remains incumbent to trade unions, but also ensure that Access to Remedy remains available and attainable for those who need it most. The role of trade unions must be secured by ensuring freedom of association is anchored. Without this anchor, workers would lose their right to an essential ally in securing their labour rights through social dialogue, as it has been proven that businesses or even governments do not voluntarily engage with trade unions[3].



Facilitate parallel voluntary HRDD processes:

As legislation is still pending in many countries and proposals are not fully aligned with OECD guidelines, the EU or national governments should actively encourage and facilitate the (voluntary) adoption of Human Rights Due Diligence (HRDD) processes by businesses. This support can manifest in various ways, for example, by providing guidance, establishing frameworks, providing training sessions, fostering capacity building, formulating sector-specific standards, and offering incentives. Crucially, efforts should be directed towards facilitating the creation of grievance mechanisms. This is not just an opportunity; it's a strategic move to prepare and learn insights from the best practices of businesses and stakeholders and be prepared for the upcoming legislation.



Call to action towards: Local/National Governments in producing countries

National and local governments of palm oil-producing countries bear the responsibility of overseeing operations within their jurisdiction and are responsible to ensure compliance with both national and international human and labour rights. This can be done, for instance, through local labour affairs offices (often referred to as manpower offices). Therefore, CNV Internationaal suggests that national governments make progress to:

Assign extra budget and resources for labour inspections

Governments ought to allocate additional funds to their local labour affairs offices, specifically for recruiting and training personnel to conduct more frequent labour inspections in line with the standards set by the International Labour Organization (ILO). This reinforces the role and mandate of these labour affairs offices, positioning them as essential collaborators in upholding labour laws. Conducting more regular on-site inspections would foster a safer work environment and eventually reduce the time spent resolving complaints. The active presence of government officials will encourage large businesses to respect land rights and international legal regulations. Trade Unions can help train inspectors about labour rights and occupational health and safety risks. Additionally, trade unions can be transparent informants about on-going situations on plantations and mills, proving to be a crucial partner.

Ensure CBAs are registered and publicly available

When CBAs are duly registered you, their legitimacy and integrity are insured. Registering them should make them easier to enforce. Another important aspect to make CBAs publicly available, is that the transparency can benefit other businesses and employees to understand industry standards and best practices, which may be used in social dialogue for ongoing negotiations. Another added value is that the CBAs will be more accessible to workers, making it easy for them to check their rights and respond properly when their rights are being violated.



Provide training to businesses and trade unions in social dialogue

Governments of producing countries need to train businesses as well as trade unions in best practices of social dialogue. This will raise awareness about the importance of social dialogue and the way it helps resolve issues in a timely manner. Additionally, it allows for an environment where businesses and trade unions have set a common understanding, making it easier to engage in social dialogue when needed in future cases. Training trade unions is essential in order to create a fair playing ground where businesses usually have more resources.



Call to action towards: Businesses in the Palm Oil sector

The OECD guidelines and upcoming legislation require businesses in the palm oil sector to prevent and mitigate adverse impacts they cause, contribute to, or are directly linked to their operations, products or services through a business relationship. Companies up and downstream should make better use of local trade unions to improve their policies and take their responsibility in tackling multiple labour rights issues in the palm oil sector. Therefore, CNV Internationaal urges businesses operating in the palm oil sector to:

Use social dialogue to resolve issues in a timely manner

Promoting effective social dialogue is imperative for mitigating the adverse effects of palm oil production on workers. To achieve sustainable and labour-friendly policies, businesses must actively encourage negotiations between trade unions, employers, and government representatives. Strengthening social dialogue both on bi and tripartite level will improve transparency and will lead to early identification of issues in the value chain. When issues are identified, either they can be resolved timely, or trade unions may help workers in submitting a formal complaint. Engaging in social dialogue together with trade unions ensures a transparent process, and creates essential linkages to identify labour rights issues and resolve them before they escalate into formal complaints.

Ensure an accessible, transparent, and functioning complaints mechanism

As a business within the palm oil chain, one way to find out if there are possible problems in your own value chain is to establish complaints mechanisms, which ensure access to workers from plantation level till the factory of consumer products. It is important that workers be actively involved in the creation of these mechanisms, and also inform their colleagues on the existence and functioning thereof.



Call to action towards: Trade unions

Trade unions play a fundamental role when it comes to supporting workers in addressing labour rights violations and improving working conditions by means of social dialogue and collective bargaining. This fundamental role should be recognised, and unions should therefore advocate for their fundamental role in Human Rights Due Diligence processes as well as in supporting access to international grievance mechanisms.

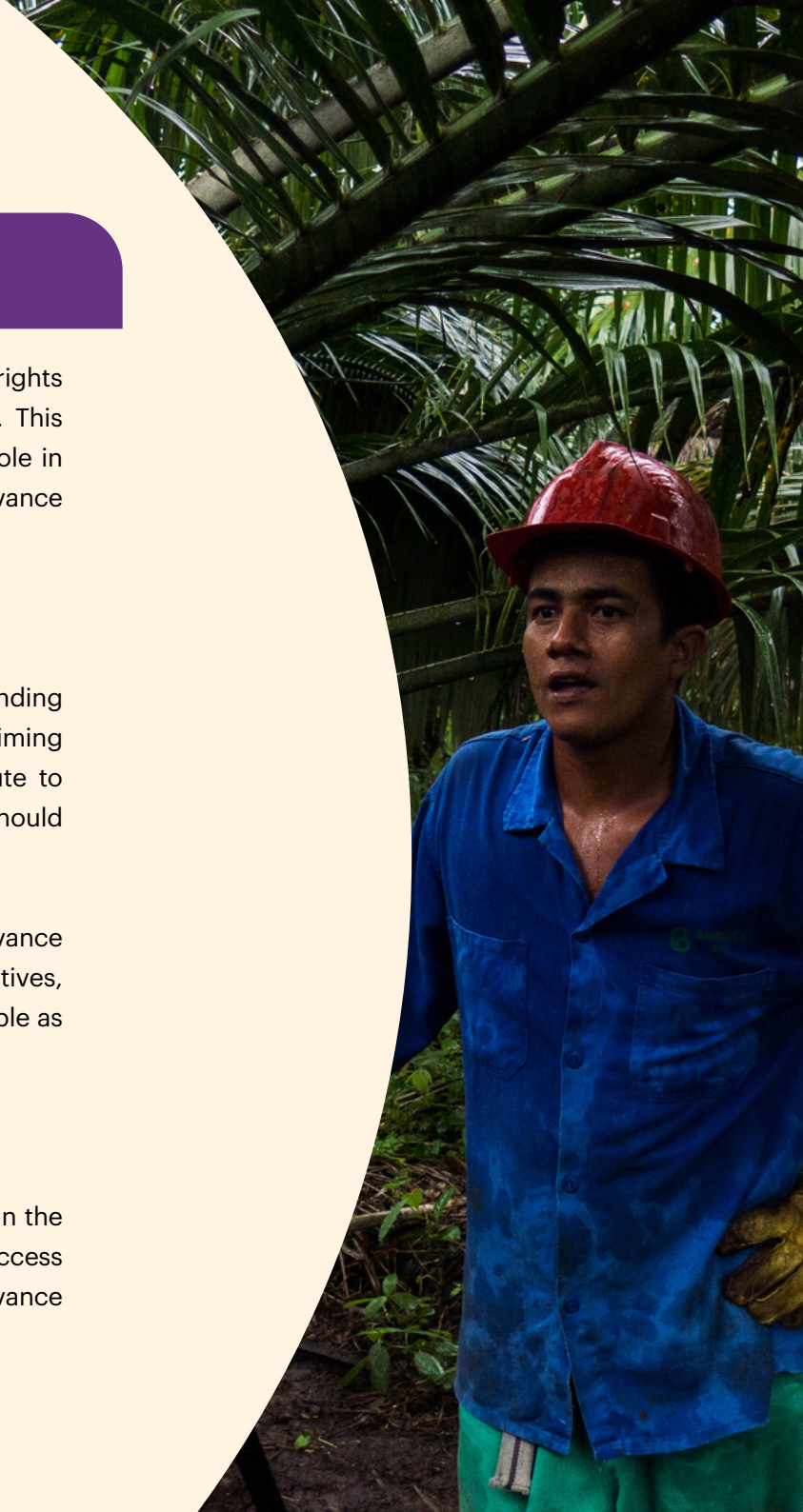
Take up your role in HRDD

The interest for social dialogue will increase due to the new upcoming legislative framework surrounding Human Rights Due Diligence aligned with the OECD guidelines. Trade unions must be proactive in claiming their fundamental role in this context. It's crucial to be prepared to provide, cooperate, or contribute to remedial actions when necessary. In discussions about viable remediation measures, trade unions should have a seat at the table, offering (legal) assistance when required.

In collaboration with businesses, trade unions can also play a role in the establishment of (required) grievance mechanisms when these are not yet in place. This can be done, e.g., through multi-stakeholder initiatives, where the local context can best be taken into consideration, making the grievance mechanism as suitable as possible.

Provide technical assistance, training and education

With a broad network of workers and companies across the sector, trade unions have the chance to train the most important stakeholders. Trade unions can assist companies in training their workers on how to access complaints mechanisms and how to properly file a complaint. This enhances the transparency of grievance mechanisms towards workers and might build trust in the effectiveness of such a system.



Monitoring and reporting

Trade unions should actively monitor and report on labour issues within the sector. This involves tracking the progress of complaints and reporting on businesses' actions regarding access to remedy. Such monitoring serves as an empowering mechanism for trade unions, providing them with accurate and relevant data for use in social dialogue. Additionally, it addresses concerns related to worker anonymity and fear of retaliation, as employees may be reluctant to speak up about the lack of effort towards access to remedy by their employers.

Collaborate with other trade unions and Civil society organizations

Trade unions should exchange data amongst each other, such as complaints from workers in the sector. This also provides an opportunity to work collectively on capacity building. Trade unions can exchange information on relevant tools and share best practices in addressing labour issues.

Trade unions might also be an effective partner towards access to remedy together with other civil rights organizations, so to reach affected communities surrounding issues, like land rights or environmental impacts. As they are in close contact with people on the ground, issues related to land rights and environmental damage could be addressed jointly.



Call to action towards: RSPO

RSPO and its members are committed to respect human rights and to provide victims of human rights violations with access to remedy. However, despite numerous efforts by RSPO, many problems still occur, calling for more access to remedy for workers raising their concerns regarding violations of their human rights. CNV Internationaal believes that the key to more effective access to remedy, is to be found in a closer alignment with (local) trade unions.

Therefore, we make an urgent call to RSPO and its members for the following actions:

RSPO and its members should actively engage in (improving) social dialogue with workers

By addressing issues through social dialogue, escalation of problems to formal complaints can be prevented. This is mutually beneficial for the company and its workers. Therefore, integrating social dialogue —or “constructive dialogue” in RSPO terms— more prominently into the RSPO Principles and Criteria, is crucial. For RSPO to make its Standard truly effective in improving the lives of workers, workers and their representatives need to be facilitated to negotiate decent work. Trade union freedom, negotiation of Collective Bargaining Agreements and social dialogue are therefore indispensable and should be actively promoted and included throughout the Principles and Criteria. In practice, this means that RSPO should prioritize the proposed HRDD guidance, and company this with technical assistance and training to employers alongside trade unions and workers on the inclusion of stakeholders and social dialogue, equipping them with the necessary tools. Examples of this are: conducting joint training sessions with trade unions on social dialogue, helping to build trust, enhancing negotiation skills for collective bargaining agreements, and serving as a basis for initiating negotiations. Or by requiring the presence of good quality CBA's or worker regulations of member companies.





Provide support to businesses for setting up their own grievance mechanisms

RSPO should, jointly with trade unions, support and promote the development and implementation of clear, effective, accessible, and transparent company-based grievance mechanisms amongst their members. Promotion by RSPO and active involvement of trade unions will ensure that companies meet their responsibility to respect workers' rights and comply with the requirements of existing Guidelines and upcoming international Due Diligence legislation. Promoting company-based Grievance Mechanisms will also reduce the number of complaints being forwarded to the RSPO complaints system.

Ensure Trade Unions are involved in the auditing process by certification Bodies

RSPO should decide that certification bodies implementing audits on the RSPO Principles and Criteria (P&C) act completely in line with the proposed 'RSPO Labour Auditing Guidance'. This is important because Freedom of Association and Collective Bargaining is required to be captured explicitly in the auditing process. Workers' representatives, including trade unions, must be invited to the opening meeting of the audit process[1]. It is strongly recommended that workers and their representatives be separately and privately interviewed by auditors, independently from company management, in a safe and anonymous way.

Strengthening RSPO's own grievance mechanism

RSPO's current complaint mechanism needs improvement. The main focus should be on improving the accessibility for communities by simplifying complex procedures, breaking down language barriers, and ensuring anonymous access for the complainant's protection. Enhancing audits, particularly on social and labour fronts, could pre-emptively address issues, reducing the need for complaints. Given the limited human resources in the complaint panel, involving a workers' representative or collaborating with trade unions in the evaluation process of improving the mechanism could inject valuable perspectives and pave the way for a more effective, locally informed approach to improvement, serving a bottom-up instead of a top-down approach.

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