

CONFERENCE "TRADE UNION GUIDELINES FOR DUE DILIGENCE" • MARCH, 2022

TRADE UNION GUIDELINES FOR DUE DILIGENCE: NORMATIVE ADVANCES, UNION ACTION EXPERIENCES AND INTEGRATION OF THE FEMINIST APPROACH.

On Thursday, March 3, the conference "Trade Union Orientations for Due Diligence" was held, organized by the Peace and Solidarity Institute of Fundación 1º de Mayo. It was attended by Cristina Faciabén, CCOO Confederal Secretary of International, Cooperation and Migration; Juan Ramon Crespo, Ministry of Social Rights and Agenda 2030; Vicente Lopez Director of Fundación 1º de Mayo; and Adoración Guamán, Professor of Labor Law at the UVEG; among other CCOO representatives and academia.

Three normative fronts are currently open for the protection of human rights, environmental sustainability and due diligence in the activities of transnational corporations. The UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises plans to draft a binding treaty around which discussions are underway, the European Commission made public a draft directive on the issue during the last days of February, and the public consultation on the Law on the Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities promoted by the Ministry of Social Rights and 2030 Agenda took place during the first days of March. In this context, this conference was organized by the Peace and Solidarity Institute of Fundación 1º de Mayo, with the collaboration of the CCOO International Secretariat, Cooperation and Migration, and funding from the Ministry of Foreign Affairs, European Union and Cooperation.

The day began with welcoming remarks by **Vicente López** (Fundación 1º de Mayo), who invited the participants to work towards a single trade union mechanism in this area,

as well as to be vigilant, proactive and aware of the day-to-day reality of companies in the management of the problem.

Cristina Faciabén (CCOO Confederal Secretary of International, Cooperation and Migration) then pointed out that human rights violations are increasing, especially regarding trade union rights. She underlined the disappointing the draft European directive is, which falls far short of expectations. She called for three key elements to be included in the legislation: enforceability and sanctioning capacity; independent public authority; and guaranteed access to justice for victims. She stressed the need to cover all types of violations and to recognize reparations to victims at the state level as well.

After the welcome speeches, **Marco Aparicio Wilhelmi** (University of Girona) took the floor and, after a historical review of the last forty years of neoliberalism (intensification of the logic of capitalist development based on extractivism), indicated that corporate responsibility since the 1970s has been integrated within a world where deregulation and regulatory Darwinism are the norm. In the 1980s and 1990s, any structure seeking corporate responsibility de-



clined. It is possible to observe elements of de-escalation, but in general terms it has been 50 years of building an architecture of impunity. The space of this impunity is the entire value chain with the parent company as the ultimate responsible party. He pointed out that, on the horizon, the central elements to be built are greater accountability, enforceability for companies, and better guarantees for victims. Criminal liability must be contemplated, as well as a clear definition of responsibility throughout the chain. Finally, he emphasized how harmful administrative sanctions can be for companies.



Adoración Guamán (University of Valencia) then spoke and delved into the legislative path being taken in this area. She emphasized that the time is propitious for parties, unions, movements and critical academia to come together to establish a new body of law to address the protection of human rights: the focus must be on the comprehensive protection of human rights and not on the good work of companies. She analyzed how transnational corporations voluntarily give up control over their value chains, which generates a voluntary corporate veil that deepens impunity and defenselessness. Due diligence is a necessary mechanism - with a dangerous conceptual ambiguity- but it is not sufficient: it is a mechanism of means -it can force companies to take responsibility for their chains- which must be complemented by a mechanism of results.

The UN's voluntary guiding principles are not the way forward: there is a need to move towards binding legislation with a more determined involvement of the ILO. The laws in California, Australia and the United Kingdom are not moving along the path of obligatory nature -they are norms focused on corporate transparency and condemnation of modern slavery. More interesting are the cases of:

- France: duty of care law, with trade unions not mentioned but present, driven by strong civil society movements and with specific obligations, although the question remains as to which link in the value chain it is applicable.

- Norway: in its scope of application it combines income and number of workers, constituting a more ambitious law than the proposed draft directive.

- Germany: due diligence obligations to direct suppliers at the first level of the chain, so that the bulk of the area where violations occur is left out; it also opens the door to exemption from liability, as in the draft directive, after responsible disclosure.

With regard to the draft directive, Adoración denounced the practical elimination of trade unions from the draft directive due to strong lobbying. With respect to the future law in Spain, she pointed out the importance of a public authority that neither closes the judicial channel nor is a transmission belt of the companies, with the labor inspectorate involved in its structure and functioning. She concluded by pointing out that Due Diligence could not be a deterrent, but that the central objective should be to hold companies accountable, forcing transnationals to recognize as a zone of control the regions of their value chains that they refuse to know.

On the part of the Ministry of Social Rights and Agenda 2030, the proponent of the law on the protection of human rights in Spain, **Juan Ramón Crespo**, accepted the proposals of his predecessors, indicating that all that remained to be done was to concrete them into a legal text. He also ventured that it was necessary not to leave the few companies that complied in a position of competitive disadvantage compared to those that did not fulfill their voluntary responsibilities.

He pointed out that the law being drafted was expected to be advanced, expansive and serve as a European example.

In the next panel, **Raquel Boto** (CCOO Confederal Secretary of Industrial Relations) recognized the role to be played by the State Council for Corporate Social Responsibility (CERSE), to avoid being changed by a weak governance that replaces social dialogue with open consultations with civil society; lobbies; consultants; etc.



“We are at a propitious moment for trade unions, political parties, movements, and critical academia to come together to [...] address the protection of human rights”
(Adoración Guamán)

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Next, **Víctor Garrido** (CCOO Industry Federation Secretary) affirmed that companies with thousands of direct suppliers and factories, located in dozens of countries and with millions of workers, such as those in whose value chains human rights violations occur, should be obliged to know their chains, but voluntarily avoid knowing the reality of these.



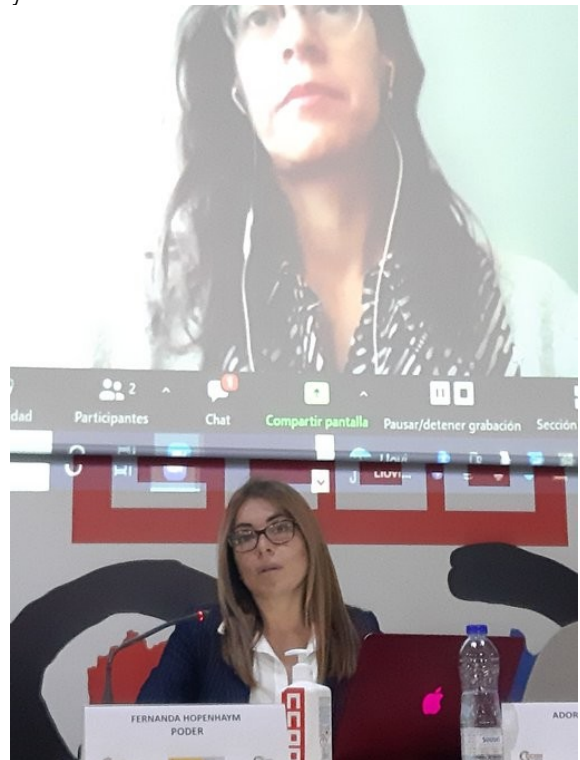
On behalf of the Fundació Pau i Solidaritat de Catalunya, **Esther Caballé** explained their experience in coordination with CCOO Catalunya in the Business and Human Rights Group of the Catalan NGO Coordinating Committee and in the Group for Socially Responsible Public Procurement in Catalonia, as well as the role of civil society, the trade union world and NGOs in the context of CSR and corporate governance mechanisms in Catalonia.



On behalf of the Peace and Solidarity Foundation of Euskadi, **Beatriz Plaza** pointed out the difficulty of working in alliance with trade unions in cooperation partner countries due to strong trade union repression. She proposed developing trade union action from an international perspective; strengthening networking with other organizations; preventing the categorization of companies as cooperation agents, which would allow them access to public funds; systematizing voluntary due diligence practices; setting up funds specifically earmarked for the implementation of due diligence processes.



The interventions of **Fernanda Hopenhaym** (PODER) and **Adoración Guamán** (University of Valencia) focused on the complete absence of a feminist and intersectional approach in the draft directive. It was also reported that the third draft of the "binding treaty" was in the process of being analyzed. It was alerted to the threats that the Due Diligence legislation faced: overload of tasks and threats of relocation, mainly.



Cristina Faciabén (CCOO Confederational Secretary of International, Cooperation and Migration) closed the day highlighting the interest and relevance of what was shared, as well as calling for the formation of a group with all the CCOO people involved in the matter to evaluate the fulfillment of the trade union indications that were reflected in the day.