

Date: 18 February 2021

Dear Commissioner Reynders,

The undersigned 79 organisations across Africa, the Americas, Asia and Europe welcome the efforts made thus far on the EU legislation on mandatory human rights and environmental due diligence. We are confident that such legislation will promote holistic and sustainable corporate governance and ensure corporate respect for the environment, human rights and internationally accepted norms and laws in Europe and around the world.

We take this opportunity to call on you to ensure that the legislation: i. Guarantees corporate respect for human rights and international humanitarian law (IHL) in conflict-affected areas; ii. Applies to all companies in the EU, including financial institutions, their operations and relationships abroad;<sup>i</sup> iii. Ensures the protection of indigenous peoples and the right to self-determination; iv. Adopts a gender-sensitive approach; and, v. Is compatible with already-existing international norms and relevant developments directed at enhancing corporate accountability, particularly those at the United Nations (UN).

In **conflict-affected areas**, corporate activities and relationships may have serious and adverse impacts on human rights and the environment.<sup>ii</sup> In line with the EU's IHL commitments and the EU guidelines on the promotion of compliance with IHL, which encompass non-State actors,<sup>iii</sup> such as business enterprises, the legislation **must address corporate involvement in human rights violations and grave breaches of international law**, as well as their role in sustaining conflicts.

As such, the legislation should include concrete and **explicit provisions noting the requirement for business enterprises to respect IHL**,<sup>iv</sup> along with human rights standards, in their operations and relationships in conflict-affected areas. The legislation should further require mandatory **enhanced human rights and environmental due diligence** for businesses operating or planning to operate in conflict-affected areas and include **effective liability for harm**. In this regard, we encourage you to consider practical examples on enhanced human rights due diligence in such contexts listed by the UN Working Group on Business and Human Rights.<sup>v</sup>

The legislation should reflect relevant precedents and initiatives on **business and human rights and corporate accountability at the UN**, complemented by regional efforts such as at the EU level, which are significant for regulated corporate conduct and respect for human rights, the environment and international law. The UN has developed tools to address corporate involvement in grave violations in areas of conflict, such as the UN database of businesses involved in illegal settlements in the occupied Palestinian territory;<sup>vi</sup> the Panel of Experts report to the UN Security Council regarding the illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of Congo;<sup>vii</sup> and the UN Fact-Finding Mission's report on Myanmar exposing military business ties and calling for targeted sanctions and embargoes,<sup>viii</sup> which is complemented by the EU's measures to protect human rights in its trade policy relevant to Myanmar.<sup>ix</sup> The ongoing negotiations on the legally binding instrument on business and human rights at the UN

provide an additional avenue to address impunity for corporate-related violations around the world, including in conflict-affected areas.<sup>x</sup>

It is important that the legislation reaffirm the fundamental **right to self-determination and permanent sovereignty over natural resources** in accordance with the Charter of the United Nations. The legislation should **ensure the protection of indigenous peoples** and respect for relevant provisions of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), namely to consult and cooperate with indigenous peoples “to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources”.<sup>xi</sup> This is explicitly confirmed by the **European Parliament’s 2018 resolution** which called on the EU to be guided by the **principles of the UNDRIP in their business and human rights approach**, and guarantee accountability for corporate impact on indigenous rights.<sup>xii</sup> FPIC should be **applicable to all affected communities** in all land and natural resource-based investments and projects.

As human rights and environmental risks and impacts are not gender-neutral, the legislation should **integrate a gender perspective**. The legislation should require companies to conduct due diligence that is gender-responsive, paying attention to multiple or aggravated forms of discrimination and identifying overlapping vulnerabilities at all times.

Should the legislation fail to address the above mentioned, we fear that it might exacerbate the already-existing **accountability gap for corporate-related human rights and environmental abuses**, especially in conflict-affected and high-risk areas. It further risks undermining the **collective right of communities and peoples to self-determination and permanent sovereignty**, access and control over their natural wealth and resources; hindering their genuine independence and causing adverse impacts on social, economic, cultural, civil and political rights.

Lastly, the legislation must ensure that **those affected by corporate-related abuses outside the EU** are able to **effectively utilize the appropriate grievance mechanisms** to guarantee them access to remedy and justice.

**Sincerely,**

1. 11.11.11, Belgium.
2. Academics for Palestine, the Netherlands.
3. Accountability Counsel, the USA.
4. ACT Alliance EU, Europe.
5. ActionAid International, South Africa.
6. ACV-CSC Belgique, Belgium.
7. Africa Europe Faith & Justice Network, Belgium.
8. Al Mezan Center for Human Rights, Palestine.
9. Al-Haq, Palestine.
10. ALTSEAN-Burma, Burma.
11. AMDH (Association Marocaine des Droits Humains), Morocco.
12. American Friends Service Committee (AFSC), the USA.

13. Andalus Institute for Tolerance and Anti-violence Studies (AITAS), Estonia.
14. ARCI, Italy.
15. Asia Indigenous Peoples Pact, Thailand.
16. Association CDCMIR: CITOYENNETE, DEVELOPPEMENT, CULTURES ET MIGRATION DES DEUX RIVES, Tunisia.
17. Arab Watch Regional Coalition (AWC), MENA.
18. Baku Human Rights Club, Azerbaijan.
19. Bangladesh Indigenous Peoples (Adivasi) Forum, Bangladesh.
20. Bank Track, the Netherlands.
21. BIP, Germany.
22. Brazilian Left Front, Ireland.
23. Breed Platform Palestina, the Netherlands.
24. Broederlijk Delen, Belgium.
25. Cairo Institute for Human Rights Studies (CIHRS), MENA.
26. Centre for Global Education, Ireland.
27. CHIRAPAQ, Centro de Culturas Indígenas del Perú, Peru.
28. Christian Aid Ireland, Ireland.
29. Christian Peacemaker Teams – Nederland, the Netherlands.
30. CIDSE, International.
31. CNCD-11.11.11, Belgium.
32. Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Mexico.
33. Comité belge de soutien au peuple sahraoui, Belgium.
34. Conflict and Environment Observatory (CEOB), the UK.
35. Dawlaty, Lebanon.
36. Decolonizer, Belgium.
37. Diakonia, Sweden.
38. European Coalition for Corporate Justice (ECCJ), Belgium/EU.
39. European Coordination of Committees and Associations for Palestine (ECCP), Europe.
40. Egyptian Human Rights Forum, Belgium.
41. ELA — Basque Workers Solidarity - trade union, Basque Country.
42. Enlace Continental de Mujeres Indígenas de las Américas – ECMIA, Americas.
43. EuroMed Rights, EU/MENA.
44. European Legal Support Center (ELSC), the Netherlands.
45. European Trade Union Network for Justice in Palestine, Europe.
46. Finnish-Arab Friendship Society, Finland.
47. FOCSIV, Italy.
48. Human Rights International Corner ETS (HRIC).
49. International Federation for Human Rights (FIDH), France.
50. International Labour Network of Solidarity and Struggles.
51. International Platform of Jurists for East Timor, the Netherlands.

52. Jüdische Stimme für gerechten Frieden in NahOst, Germany.
53. La Centrale Générale-FGTB, Belgium.
54. Lawyers for Palestinian Human Rights (LPHR), the UK.
55. Lobby for Cyprus, the UK.
56. L'union syndicale Solidaires, France.
57. MENA werkgroep FNV, the Netherlands.
58. Mouvement Ouvrier Chrétien (MOC), Belgium.
59. Narasha Community Development Group, Kenya.
60. NOVACT – International Institute for Nonviolent Action, Spain.
61. Oxfam International, International.
62. PAX, the Netherlands.
63. People's Watch, India.
64. Philippine Alliance of Human Rights Advocates (PAHRA), Philippines.
65. Polish Institute for Human Rights and Business, Poland.
66. Shannonwatch, Ireland.
67. Solicitors International Human Rights Group, the UK.
68. SolSoc, Belgium.
69. Syrian Center for Legal Studies and Research, Syria.
70. Syrian Legal Development Programme (SLDP) – Human Rights and Business Unit, the UK.
71. TEBTEBBA (Indigenous Peoples' International Centre for Policy Research and Education), Philippines.
72. The Indigenous Peoples Rights International and DOCIP, Philippines.
73. The Kvinna till Kvinna Foundation, Sweden.
74. The New Woman Foundation, Egypt.
75. The Palestine Institute for Public Diplomacy (PIPD), Palestine.
76. Transnational Institute, the Netherlands.
77. Vrede vzw, Belgium.
78. Women's International League for Peace and Freedom, Switzerland.
79. WSM, Belgium.

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<sup>i</sup> FIDH, "A Matter of Justice: How European Legislation Can Make a Difference – Experiences and views from around the world on how to establish meaningful EU rules on corporate accountability", December 2020, available at: [https://www.fidh.org/IMG/pdf/a\\_matter\\_of\\_justice.pdf](https://www.fidh.org/IMG/pdf/a_matter_of_justice.pdf). See also, "An EU mandatory due diligence legislation to promote businesses' respect for human rights and the environment", September 2020, available at:

<https://www.amnesty.org/download/Documents/IOR6029592020ENGLISH.PDF>

<sup>ii</sup> In conflict-affected areas, corporations domiciled in Europe may be responsible for incentivizing or exacerbating infringements of international human rights and humanitarian law and complicit in aiding and abetting the commission of international crimes. See for example, GLAN & Al-Haq, "Business and Human Rights in Occupied Territory", April 2020, available at: [https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a\\_ff45366d84f04a0d9326b002c1449e5a.pdf](https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_ff45366d84f04a0d9326b002c1449e5a.pdf); Mwatana for Human

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Rights, “Made in Europe, Bombed in Yemen”, December 2019, available at: <https://mwatana.org/en/made-in-europe-bombed-in-yemen-case-report/>; ECCHR, “Lafarge in Syria – Accusations of Complicity in Grave Human Rights Violations”, available at: <https://www.ecchr.eu/en/case/lafarge-in-syria-accusations-of-complicity-in-grave-human-rights-violations/>; and, ECCJ, “French company Lafarge sued for financing ISIS and complicity in war crimes and crimes against humanity in Syria”, November 2016, available at: <https://corporatejustice.org/news/336-french-company-lafarge-sued-for-financing-isis-and-complicity-in-war-crimes-and-crimes-against-humanity-in-syria>. See also, CEOBS, “How Does War Damage the Environment”, June 2020, available at: <https://ceobs.org/how-does-war-damage-the-environment/>.

<sup>iii</sup> Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL), 2009/C 303/06, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52009XG1215\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52009XG1215(01)). In addition, the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (2016) provide a set of existing obligations under international humanitarian law applicable in situations of conflict.

<sup>iv</sup> ICRC, Business and International Humanitarian Law – An Introduction to the Rights and Obligations of Business Enterprises Under International Humanitarian Law, available at: [https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0882.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0882.pdf)

<sup>v</sup> UN Working Group on the issues of human rights and transnational corporations and other business enterprises, “Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory”, June 2014, available at: <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

<sup>vi</sup> UN OHCHR, “UN rights office issues report on business activities related to settlements in the Occupied Palestinian Territory”, February 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542>

<sup>vii</sup> UN Security Council, “Letter dated 15 October 2003 from the Chairman of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo addressed to the Secretary-General”, 2003, available at: <https://undocs.org/S/2003/1027>

<sup>viii</sup> UN OHCHR, “UN Fact-Finding Mission on Myanmar exposes military business ties, calls for targeted sanctions and arms embargo”, August 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24868&LangID=E>

<sup>ix</sup> European Commission, “Report on Enhanced Engagement with three Everything But Arms beneficiary countries: Bangladesh, Cambodia and Myanmar”, February 2020, available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-19-F1-EN-MAIN-PART-1.PDF>; European Commission, “EU monitoring mission evaluates progress on human rights and labour rights in Myanmar”, February 2019, available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1331](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1331); and, European Parliament, “Human rights in EU trade policy – Unilateral measures applied by the EU”, May 2018, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621905/EPRS\\_BRI\(2018\)621905\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621905/EPRS_BRI(2018)621905_EN.pdf).

<sup>x</sup> UN Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, August 2020, available at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG\\_Chair-Rapporteur\\_second\\_revised\\_draft\\_LBI\\_on\\_TNCs\\_and\\_OBEs\\_with\\_respect\\_to\\_Human\\_Rights.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf). See also, calls made by civil society from around the world on the legally binding instrument process: ESCR-Net, “ESCR-Net Position Paper on the Revised Draft of Treaty on Transnational Corporations and Other Business Enterprises with Respect to Human Rights”, October 2019, [https://www.escr-net.org/sites/default/files/escrnet\\_cawg\\_position\\_un\\_treaty\\_october\\_2019\\_0.pdf](https://www.escr-net.org/sites/default/files/escrnet_cawg_position_un_treaty_october_2019_0.pdf).

<sup>xi</sup> UN Declaration on the Rights of Indigenous Peoples, Article 32.

<sup>xii</sup> European Parliament resolution of 3 July 2018 on violation of the rights of indigenous peoples in the world, including land grabbing, available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0279\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0279_EN.html)