

Dear members of the JURI Committee,

We, the undersigned human rights and environmental civil society organisations, call on members of the JURI Committee to support the protection of the internationally-recognised rights of Indigenous Peoples, as well as the distinct but also internationally-recognised rights of other peoplesⁱ and of local communities,ⁱⁱ in the Corporate Sustainability Due Diligence Directive (CSDDD).

The CSDDD and its goal to address the human rights and environmental impacts of companies' global value chains is much welcomed and needed to realise the European Union's human rights and environmental commitments. If properly formulated and implemented, it has the potential to help curtail human rights violations and environmental destruction around the world linked to the operations and value chains of companies operating on the EU market.

However, the existing proposal is insufficiently rigorous in respect of the rights of Indigenous Peoples, as well as the rights of other peoples and local communities, particularly in relation to land and in respect of collective rights. As pointed out by the UN Special Rapporteur on Human Rights and the Environment, *"the articles of the draft EU Directive are particularly disappointing in their failure to make explicit reference to Indigenous Peoples, Afro-descendants, local communities, peasants, children, women, or any of the other vulnerable persons or groups who may be impacted by irresponsible business practices."*ⁱⁱⁱ

Moreover, we are concerned that political negotiations within the EU institutions risk further undermining the effectiveness of the proposed Directive for Indigenous Peoples, as well as for other peoples and local communities, with the result that it could fail to bring any meaningful change for millions of people worldwide who suffer grievous rights violations linked to EU business activities.

Civil society organisations and the millions of people affected by corporate human rights violations around the world expect EU decision-makers to improve the CSDDD proposal text during the legislative process. Unfortunately, the Council, in its general approach on the Directive adopted in December 2022, has unjustifiably voted to remove point 20, protecting Indigenous Peoples' land rights, from Section 1 of Annex 1, as well as to remove the reference to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) from Annex 2. This position is entirely unacceptable and if adopted would represent a flagrant disregard by the European Union for its international human rights obligations towards Indigenous Peoples.

Impacts of corporate activities on Indigenous Peoples and on local communities

The prevalence of adverse impacts on Indigenous Peoples and on local communities created by companies' global value chains is well documented^{iv}. There is a large body of evidence on human rights violations linked to land-grabbing^v or forced evictions, for example in the context of agricultural investments^{vi}, mining^{vii}, oil and gas extraction, or infrastructure projects.

The vulnerability of Indigenous Peoples, other peoples and local communities to land-grabbing is heightened because approximately 80%^{viii} of their collective customary land and territories are not formally titled or otherwise legally recognised. This in turn links to other abuses. For example, the EU Human Rights Defenders Mechanism is facing a dramatic increase in requests for emergency aid caused by human rights violations linked to encroachment of corporate farming, mining and other activities onto lands occupied by Indigenous and local communities. The organisation Frontline

Defenders calculated in its 2020 Global Analysis^{ix} that defenders of the rights of Indigenous Peoples represented 26% of defenders killed in the world that year.

While the original CSDDD proposal pulls from a wide range of international law instruments in attempting to define adverse impacts to be identified and addressed by companies, it fails to capture the entirety of rights of Indigenous Peoples and the rights of local communities protected in international law^x and thus falls short of its objective to develop a comprehensive human rights due diligence framework.

In order to ensure that the rights of Indigenous Peoples, as well as the rights of other peoples and local communities, are not excluded from the EU's efforts to address human rights violations in companies' value chains, we ask members of the JURI committee to support the following improvements to the Directive:

1. Improve the coverage of the internationally recognised rights of Indigenous Peoples, including the right to self-determination and FPIC

While Indigenous Peoples' right to their lands, territories and resources is explicitly included in Annex 1, Section 1 of the Directive (point 20), the proposal does not cover other key rights of Indigenous Peoples, including the right to self-determination^{xi} and the right to free, prior and informed consent (FPIC).^{xii} In addition, while certain limited provisions of UNDRIP are mentioned in connection with land and resource rights, there is no reference to other binding conventions that also protect Indigenous Peoples' rights, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).^{xiii} These treaties have all been ratified by all EU member states and should be explicitly referenced in the text. The provisions of UNDRIP listed in the annex also notably omit the requirement to prioritise restitution of lands in the case of unlawful expropriation of Indigenous Peoples' lands, as set out in article 28 of UNDRIP.^{xiv} This requirement should also be explicitly acknowledged in the text.

2. Protect the rights of other peoples and local communities, particularly their rights to land and associated rights

In addition to the deficiencies with respect to Indigenous Peoples' rights, the Directive also does not adequately protect the land and other rights of other peoples and local communities. Under the current proposal, companies are only required to assess potential impacts on lands owned by other peoples and local communities in so far as these are linked to the right to an adequate standard of living under article 11 of ICESCR.^{xv}

However, the rights of other peoples and local communities under international law, while distinct from those of Indigenous Peoples and diverse depending on the nature of the people or community involved, extend substantially beyond this. In many instances such rights are also collective and attract protection as such. The failure to recognise the diversity and complexity of land rights protections owed to different groups and peoples is a troubling omission that risks denying protection and recourse to many millions of people and communities whose land rights are regularly

violated by activities in companies' value chains. Their rights should thus explicitly be protected in accordance with ICCPR and ICESCR.

3. Require companies to consult, and fully respect the rights, of vulnerable rightsholders as part of their due diligence processes

Another major deficiency in the proposed Directive relate to companies' obligations to consult affected stakeholders as part of their due diligence processes. A first major concern is that consultation with stakeholders would effectively be optional, with companies being required to implement this only "where relevant".^{xvi} Furthermore, the proposals for stakeholder consultation processes do not sufficiently take into account the specific requirements under international law for consulting Indigenous Peoples – including the right to Free, Prior and Informed Consent (FPIC) – and other collective rightsholders.

There are also no parameters or guidelines for the quality of stakeholder consultations (including e.g. around communicating in local languages, ensuring accessibility, inclusiveness and cultural appropriateness, or non-interference in governance), nor any clear indication of the timelines involved. There is also a failure to recognise the need for consultation and consent in relation to determining the appropriate *remedy* for harms that companies have caused – which, as noted above, in the case of Indigenous Peoples, should include the restitution of any lands appropriated without FPIC. The Directive should require companies to consult vulnerable rightsholders as part of their due diligence processes, and fully respect their rights to ensure that mitigation and remediation actions meet the needs and expectations of rightsholders.

With the upcoming JURI committee vote imminent, we call on you as members of the Committee to support amendments that will maintain and improve the Commission proposal with regard to the protection of the rights of Indigenous Peoples, as well as the rights of other peoples and local communities. This is the only approach that will uphold the EU's international obligations, and is consistent with recommendations repeatedly made by the European Parliament since 2018 and recalled in its resolution of March 2021^{xvii}. We are counting on you.

Signatories:





ⁱ As a general principle, “peoples” (including but not limited to Indigenous Peoples) have a collective right to self-determination protected under inter alia common article 1 of the International Covenant on Civil and Political Rights and the international Covenant on Economic, Social and Cultural Rights, as well as other regional instruments such as the African Charter on Human and Peoples’ Rights (articles 19 and 20). “Peoples” may also have a range of other collective rights associated with this status (see e.g. African Charter on Human and Peoples’ Rights, articles 21-26; *Saramaka Peoples v. Suriname*, IACtHR, Ser. C No. 172, 28 November 2007); ILO Convention No. 169 on the rights of indigenous and tribal peoples.

ⁱⁱ While the term “local communities” is used in international human rights law (for example, in the UN Declaration on the Rights of Peasants and in a wide range of concluding observations and treaty bodies), it does not have a unified meaning globally nor is it a term which is associated with any one particular type of rightsholder group with specifically defined rights. Rather, it is an umbrella term that captures heterogeneous groups, including some whose cultural and traditions means they have collective rights that may be very similar to Indigenous Peoples, and others whose individual rights are protected but whose rights do not have any collective dimension. Because of the diversity of the groups covered by the term “local communities”, it is not possible to elaborate specific rights held by all “local communities” – rather, the nature of rights that companies must respect in relation to local communities is context-specific and needs to be determined on a case-by-case basis in accordance with the prevailing human rights law. It is however worth noting that collective rights to self-determination, to land, and to free, prior and informed consent have been recognised in relation to some groups that may in some instances be called “local communities”, including some Afro-descendant groups (see e.g. Inter-American Court of Human Rights, *Case of the Moiwana Community v Suriname*, Judgment of June 15, 2005 (Preliminary Objections, Merits, Reparations, and Costs), para 133; IACtHR 2007 Part VII; *Saramaka Peoples v. Suriname*, IACtHR, Ser. C No. 172, 28 November 2007) as well as some types of traditional communities (see e.g. AfCHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/2003, 4 February 2010, para 238; AfCtHPR, *African Commission on Human and Peoples’ Rights v. Republic of Kenya, Application No 006/2012*, Judgment of 26 May 2017, para 123; Inter-American Commission of Human Rights, *Traditional Farmers’ and Artisanal Fishermen’s Community of Areais Da Ribanceira v. Brazil*, Report No. 131/20: Petition 90-11: Report on Admissibility. See also references to the rights to customary lands, and to free, prior and informed consent of “local communities” by the Human Rights Committee (e.g. HRC (2018), *Concluding Observations: Liberia*, UN Doc No. CCPR/C/LBR/CO/1, paras 46 and 47).

ⁱⁱⁱ Special Rapporteur on Human Rights and the Environment, David Boyd (2022), *Policy Brief No. 3: Essential elements of effective and equitable human rights and environmental due diligence legislation*, available at: <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2022-07-01/20220701-sr-environment-policybriefing3.pdf>.

^{iv} IWGIA (2022), *The Indigenous World 2022 : Business and Indigenous Peoples’ Rights*

^v Forest Peoples Programme (2021), *Defending Lands, Lives and Livelihoods in the Peruvian Amazon*

-
- ^{vi} Forest Peoples Programme (2018) [Closing the Gap: Rights-based solutions for tackling deforestation](#)
- ^{vii} World Resources Institute, [Undermining Rights : Indigenous lands and mining in the Amazon](#)
- ^{viii} Rights and Resources Initiative (2020), *Estimate of the area of lands and territories of Indigenous Peoples, local communities and Afro-descendants where their rights have not been recognized*, available at <https://rightsandresources.org/publication/estimate-of-the-area-of-land-and-territories-of-indigenous-peoples-local-communities-and-afro-descendants-where-their-rights-have-not-been-recognized/>.
- ^{ix} Frontline Defenders (2020), [Global Analysis 2020](#).
- ^x Forest Peoples Programme (2022), [What will the European Commission’s proposed Corporate Sustainability Due Diligence Directive mean for the human rights of Indigenous Peoples and of local communities?](#)
- ^{xi} Protected by inter alia common article 1 of ICCPR and ICESCR, article 3 of UNDRIP. See also CEDAW General Recommendation No. 39 (2022).
- ^{xii} Protected by inter alia ICCPR articles 1 and 27 (see e.g. *Poma Poma v Peru*, Communication No. 1457/2006) CERD (see e.g. *Ågren v Sweden* (2020), UN Doc No. CERD/C/102/D/54/2013),
- ^{xiii} These include for example ICCPR articles 1, 17 and 27 (see *Poma Poma v Peru*, *Daniel Billy v Australia* (2022)); ICESCR articles 1, 10, 11 and 15, General Comment no. 26 (2023) on land and economic, social and cultural rights; ICERD article 5(d)(v), General Recommendation No 23; see also CEDAW, articles 13 and 14, General Recommendation No. 39 (2022).
- ^{xiv} This requirement is explicitly set out in article 28, UNDRIP, but is also derived from other sources: see e.g. Inter-American Court of Human Rights, *Case of Sawhoyamaya Indigenous Community v Paraguay* (2006), para 128.
- ^{xv} Annex 1, Section 1, point 19.
- ^{xvi} See article 6.4; article 7.2(a) and article 8.3(b).
- ^{xvii} European Parliament (2021), [Resolution \(2020/2129\(INL\)\) of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability](#)