



## Global Campaign statement on the European Directive on mandatory due diligence on human rights

9<sup>th</sup> March 2021

The [Global Campaign to reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity](#) takes note of the European Parliament's report on the EU Directive on mandatory due diligence. However, the Global Campaign considers that it falls short of the needed binding norms for transnational corporations and human rights that we have been demanding for two decades. The proposal is too focused on due diligence, a concept linked to the self-regulation of corporations. “Mandatory” due diligence is a legal sophistication of the UN Guiding Principles that have proved to be inefficient in holding transnational corporations accountable for the violation of human rights. Therefore, the future directive should go way beyond this concept.

As a network of [over 250 movements, CSOs, trade unions and affected peoples organisations](#) that has promoted the adoption of a Legally Binding Instrument on Transnational Corporations within the UN Human Rights Council (Binding Treaty) since the beginning of the process, we want to highlight the importance that **all regulatory processes, whether at regional level - such as the aforementioned Directive - or at national level, take into account [the proposals that we have worked on and presented within the framework of the UN process](#)**. Those are the result of a dialogue between numerous civil society actors, communities affected by corporate crimes worldwide, committed scholars and jurists. They aim to achieve the international binding regulatory framework necessary **to ensure access to justice for communities affected by human rights violations by transnational corporations (TNCs) and the destruction of nature, and to put an end to corporate impunity**.

We remind that the UN and the European processes are neither in opposition nor in contradiction, on the contrary, they should complement each other and evolve together **to ensure high levels of prevention, administrative, civil and criminal liability of the corporations, as well as the remedy for affected communities as soon as possible and at all levels (national, regional and international)**.

In relation to the European Directive, it should be an open and democratic process, taking into account the proposals of civil society, while being protected from corporate influence and capture. Following the proposals made previously by the Global Campaign in the elaboration of a UN binding instrument, we consider important that the future Directive:

- Broadens its scope and title beyond due diligence to encompass the whole set of obligations that States need to impose on transnational corporations to make sure human rights and the environment are protected.
- Covers corporate legal responsibility **along the entire value chain of transnational corporations**, including solidary responsibility (joint and several liability) among its entities.



- Includes clear sanctions and administrative, civil and criminal liability regimes when transnational corporations do not comply with their obligation to prevent human rights violations and when violations actually occur, both within the EU and outside it
- Covers all human rights and environmental violations. Due diligence, on the other hand, can in no case weaken or replace the responsibility of companies in the effective accomplishment of human rights, putting in its place an obligation that is limited to the mere prevention of harmful consequences.
- Ensures the primacy of human rights reaffirming the hierarchical superiority of human rights norms over trade and investment treaties, developing specific state obligations in this regard, such as the cancellation of ISDS clauses.
- Provides for specific obligations, separated and independent from those of States, for TNCs and international financial institutions involved in violations.
- Includes provisions to improve access to justice, among which the reversal of the burden of the proof, choice of the applicable law by the plaintiffs, enhanced access to information and funds for affected people legal expenses.
- Establishes a multi-party body (State, unions, human and social rights organizations) that is responsible for receiving complaints from individuals, legal entities and communities that have been affected by the violation of their human rights and, on the other hand, accompanies the processes of administrative, civil and criminal sanction.
- Enables complaints from communities and natural and legal persons related to human rights violations committed by European transnational corporations, both inside and outside the EU, to be heard by the relevant European courts.

We believe that if the Directive does not include those demands, it will not be effective in ending corporate impunity. It is also imperative that the concept of prevention is not reduced to that of mandatory due diligence as a simple ‘tick box’ process to be put in place by the companies that would allow them to escape their responsibilities. Furthermore, we believe that the Directive will not be effective if the mechanisms for determining legal liability are not treated absolutely independently of the human rights due diligence obligation: due diligence does not absolve companies of their liability for violations. The latter, in any case, must be an obligation of results and not of means.

We urge MEPs to ensure that the Binding Treaty process at the UN is not subordinated to the European regional legislation process, as it consecrates fuller obligations and recognizes higher levels of protection in attention to the principle of progressivity of Human Rights. We also urge them to incorporate the aforementioned elements in the future law, which are necessary to elaborate a strong law, capable of addressing the impunity of TNCs and ensuring full and effective access to justice.

More information: <https://www.stopcorporateimpunity.org/binding-treaty-un-process/>