“Rise to the occasion and ensure a strong EU Corporate Sustainability Due Diligence Directive”

> *“Each meaningful economic decision made in one part of the world has repercussions everywhere else; consequently, no government can act without regard for shared responsibility.”* Pope Francis, Evangelii Gaudium 206

The negative impacts of corporate activities on human rights and the environment are all too often not only accidental and isolated incidents of business activities; they are the consequence of an economic system that puts profit over people and the accumulation of wealth over care for the environment and the protection of human rights.

For years, civil society together with faith-based and religious organisations, have been advocating for the introduction of mandatory human rights and environmental due diligence (mHREDD) legislation in the European Union and for access to justice for those affected by corporate abuses. Already in 2020, more than 230 Catholic Bishops joined civil society groups and citizens in asking for mandatory human rights and environmental due diligence legislation.

Now that such mandatory legislation is on its way, the European Parliament should rise to the occasion and ensure that the Corporate Sustainability Due Diligence Directive (CSDDD) marks a true turning point in how the EU addresses the threats that irresponsible corporate activities pose to our Human Family and our Common Home.

In solidarity with our sisters and brothers around the world who defend Creation and human dignity from negative impacts of profit-driven corporate activities, **we are calling on the European Parliament to put rightsholders and human rights protection at the center of a strong and effective EU due diligence law**.

Our call joins that of a large number of EU citizens, European and global businesses, investors and international organisations such as the OECD, OHCHR and the ILO.

Due diligence is needed now more than ever, and it is part of the solution to a sustainable economy that serves people and respects the planet. A record number of half a million citizen and civil society submissions to the European Commission’s consultation on this directive proposal show just how important this issue is for voters. Polling shows that over 80% of EU voters support strong corporate accountability legislation.

In view of the upcoming vote in the European Parliament and the start of inter-institutional negotiations on the CSDDD proposal, we wish to submit, in particular, the following points for the decision-makers' consideration:

1. Cover the entire value chain and downstream impacts

Due diligence obligations should apply to downstream risks and impacts in the value chain. The OECD, OHCHR and ILO have all called for due diligence obligations to also apply to downstream risks and impacts in the value chain. As per international standards, a company's due diligence process must apply to its business partners and business relationships, and cover "general areas of significant risk" across their operations. Artificially limiting this process to the sole supply chain will make it impossible for companies to address and remedy many of the most serious potential and actual risks present in their value chains. It also goes against what companies themselves have been calling for and implementing.

The same reasoning must be applied to the financial sector. Proposals to exclude the financial sector from the list of high-risk sectors of the directive, or even to exclude it from its scope altogether, do not acknowledge the momentous role the sector plays in financing harmful and polluting global economic activities. Most of this harm is concentrated on the downstream impacts of financial services, as experts find that portfolio emissions of global financial institutions are on average over 700x larger than direct emissions. We cannot risk the finance sector continuing to profit from corporate abuse in global value chains. Financial actors should be held responsible for the consequences of their investments throughout their value chains and throughout the whole duration of their activities.

2. Protect vulnerable groups and mandate meaningful stakeholders' consultation

European policy-makers should ensure that the CSDDD is fit to address the needs of those directly affected by corporate misconduct. Engaging in good faith, meaningful and informed discussions with affected communities and rightsholders is essential to the development and implementation of a truly effective, risk-based due diligence strategy. Affected stakeholders are often the ones holding substantial information regarding human rights and environmental risks and impacts of a company's operations: there can be no effective due diligence without prior meaningful consultation of the people and communities who see and face those risks every day. Such strategy should also pay enhanced attention to marginalised stakeholders and groups in situations of vulnerability – including but not limited to children, women, ethnic, religious and linguistic minorities, as well as migrants, indigenous people and people with disabilities.

With specific regard to indigenous people, who too often bear the disproportionate impacts of corporate negligence and must fight-off continuous threats to their ancestral lands, the CSDDD should clarify that stakeholder consultation cannot infringe on indigenous people's right to Free, Prior and Informed Consent (FPIC), an established international principle when investments are directed to indigenous people's lands and communities. The United Nation's Declaration on the Rights of Indigenous People should also be specifically mentioned.

3. Put human rights and the environment at the center

In line with international standards, human rights impacts should be defined as those which remove or reduce the ability of individuals and groups to enjoy said rights, rather as a violation of a given international convention. We also call for the inclusion in the Human Rights Annex of the Directive of other important rights protections such as FPIC, as well as relevant ILO instruments on occupational safety and health, which as of June 2022 are recognised as being part of the ILO's fundamental principles and rights at work.

On the environmental side, the past few years have seen a dramatic increase in the number of corporate climate pledges and a lack of accountability and regulatory oversight. Without specific criteria put in place, there is a real risk this greenwashing phenomenon continues in the face of the very real climate crisis currently facing our planet, while corporations benefit climate plans that are merely cosmetic and good for public relations. The UN High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities has recommended specifications of the requirements precisely to avoid greenwashing. It is therefore crucial to strengthen Article 15 and set out specific requirements on transition plans and climate targets, that must be both actionable and sanctionable by public authorities and national courts.

4. Civil liability and Access to Justice

The EU Fundamental Rights Agency has been calling for a reduction in barriers to justice for victims of corporate abuse in global value chains since 2017. Under Pillar III of the United Nations Guiding Principles on Business & Human Rights (UNGPs) on Access to Remedy, States and the EU have the obligation to adopt such improvements. A study commissioned by the European Parliament in 2019 on access to legal remedies for victims of corporate human rights abuses has found that claimants in such cases face very high barriers to justice – including legal fees, unreasonable statutes of limitation and language barriers. The issue of the burden of proof is also of particular concern, as information pertaining to a company's operations is often regarded as trade secret and it can prove difficult or impossible to access for victims, which prevents them from effectively making their case. Although issues related to civil liability and access to justice largely fall under the competence of Member States, it is the responsibility of the European co-legislator to mandate EU governments to adopt the necessary measures to remove the obstacles facing those seeking justice for corporate abuse, including reversing the burden of proof, third party representation in court and collective remedy.