

To the Members of the European Parliament, the Member States and the European Commission,

The undersigned organizations and academic professionals active in the field of business, conflict and human rights welcome the European Commission's Proposal for a Directive on Corporate Sustainability Due Diligence. However, we also identify a highly concerning gap in the draft directive: the absence of any provisions regarding conflict and responsible business conduct in conflict-affected and high-risk areas.¹ Given that the Directive is intended to align with the UN Guiding Principles on Business and Human Rights (UNGPs), we would like to draw your attention to these gaps and suggest how it could be amended to ensure greater alignment with the UNGPs, greater compliance with Member States' obligations and ultimately, greater positive impact.

In conflict-affected areas, businesses face a high and acute risk of involvement in severe human rights abuses and violations of international humanitarian law. As the UN Working Group states in its July 2020 [report](#) on business in conflict-affected areas: "Businesses are not neutral actors; their presence is not without impact. Even if a business does not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics". Ongoing legal cases against the Swedish oil company [Lundin Energy](#) for allegedly facilitating war crimes in Sudan, against the French cement company [Lafarge](#) for alleged complicity in crimes against humanity during the war in Syria, and against the French food and beverage conglomerate [Castel](#) for alleged complicity in war crimes and crimes against humanity in the Central African Republic, show the risks of business involvement in conflict most poignantly. Many other EU-based companies are operating in conflict-affected contexts or are linked to them via their value chains: from sourcing raw materials and products from conflict-affected areas in Ukraine and Myanmar, to having business operations and relationships in areas of military occupation like the Occupied Palestinian Territories, or supplying weapons to regimes accused of committing war crimes. Recent [research](#) by the Business & Human Rights Resource Centre on companies' due diligence response to the escalating conflict in Ukraine has shown that the large majority of companies struggle with responsibly navigating conflict.

A first important omission in the current draft directive lies in its material scope, which is now limited to human rights and environmental law. In situations of armed conflict, not only human rights, but also **international humanitarian law** (IHL) must be respected. Respect for IHL in situations of armed conflict is not only stipulated in the UNGPs and elaborated upon in the aforementioned UN Working Group report, but also features clearly in the European Parliament's own recommendations to the Commission on future corporate due diligence legislation. The directive should follow these recommendations and include IHL as an integral part of the legal framework to be respected in armed conflict situations. This aligns with and facilitates the European Union's own commitment to advancing the principles of international law, as laid down in its founding Treaties.

Secondly, in order to prevent and address the heightened risks in conflict-affected areas in a timely and targeted manner, the UNGPs require companies operating in conflict or high-risk areas to conduct **heightened due diligence**. The July 2020 report of the UN Working Group and the UN Working Group and UNDP's recently published [guide](#) "Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts" both elaborate on the requirements and expectations for heightened due diligence. Heightened due diligence in conflict-affected and high-risk areas entails enhancing the frequency and thoroughness of human rights due diligence procedures, as well as integrating **conflict analysis** into human rights due diligence processes. This analysis should be aimed at understanding the conflict dynamics and how they impact on human rights; how the business's operations interact with these dynamics; and what the business's capacity is to prevent or minimize negative impacts. It should inform a clear action plan aimed at preventing and/or mitigating the risks that cause or exacerbate conflict. The conflict analysis and the action plan need to be based on in-depth consultation with a broad, representative group of stakeholders (including civil society actors in the conflict-affected area as well as national and international partners), to get a well-informed, broad-based and comprehensive picture of the situation and of the different perceptions of that situation.

Heightened due diligence also entails ensuring that any step taken in this process is **conflict sensitive**. In conflict-affected and high-risk areas, workers, community members, and other rights-holders who agree to speak to impact assessors face heightened risks of reprisals. Businesses need to ensure that all participants are protected to the greatest extent possible, i.e. by guaranteeing

¹ Conflict-affected and high risk areas' includes a variety of contexts: situations of armed conflict, large-scale violence or military occupation, but also post-conflict situations and areas with a high level of tensions, unrest or risk of large scale violence.

confidentiality, taking steps to ensure meetings are discrete and that different groups and parties of the conflict are consulted as appropriate. Grievance mechanisms, both judicial as well as non-judicial, should also fully guarantee confidentiality and the safety of people using them.

When it comes to the provision of **remedy**, the current draft directive mainly refers to the possibility of financial compensation. The UNGPs are clear that compensation is only one form of remedy and may not be sufficient in all cases. As outlined in the UN Working Group report other forms of remedy are often equally or more important in conflict situations and as part of a post-conflict transitional justice process. These include non-monetary reparations, recognition, apologies and memorializations, participation in truth-finding and reconciliation processes, guarantees of non-recurrence, and criminal prosecution of actors who have committed or contributed to serious human rights violations. The provision of remedy in conflict-affected areas and in situations of transitional justice – and including all steps taken to secure those remedies – also need to be conflict-sensitive, based on close stakeholder engagement and not cause new or exacerbate existing tensions between groups. Finally, states should ensure that victims have effective access to justice.

By requiring businesses to undertake heightened due diligence in conflict-affected and high-risk areas, the Directive can help businesses avoid causing or exacerbating conflict and negative human rights impacts in conflict-affected areas. Moreover, by helping businesses address the drivers of conflict, the Directive can also help businesses to positively contribute to an enabling environment for peace. This aligns with and facilitates the European Union's commitment to international peace and security.

We are grateful that the European Commission is committed to ensuring international standards on business and human rights are binding in the EU. However, important gaps in the directive need to be addressed. The European Parliament and the Member States now have the opportunity to do so and to outline clear requirements for business conduct in conflict-affected contexts.

We urge the relevant policy makers to include the following provisions in the EU directive on corporate sustainable due diligence:

- **The directive should refer to the fact that international humanitarian law must be respected in situations of armed conflict.**
- **The directive should specify in articles 4-11 that companies are obliged to conduct heightened, conflict-sensitive due diligence in all cases where they operate in a conflict-affected or high-risk area or are linked to it in their upstream and downstream value chains. This obligation should apply to all companies, regardless of sector or size.**
- **The directive should make specific reference to security management as a high-risk operational area, especially in conflict-affected contexts, in order to clarify expectations and ensure companies take into account salient risks posed by security providers.**
- **The directive should explicitly require companies to conduct meaningful, in-depth and conflict-sensitive engagement with a broad group of stakeholders, including vulnerable populations, as central part of all steps in the due diligence process.**
- **The directive should refer to other forms of remedy in addition to and beyond financial compensation that might be important, such as non-monetary reparations, recognition, apologies and memorializations, participation in truth-finding and reconciliation processes, guarantees of non-recurrence, and criminal prosecution of actors who have committed or contributed to serious human rights violations.**
- **The directive should require the adoption of adequate, appropriate and conflict-sensitive judicial and non-judicial grievance mechanisms and should improve access to justice for victims of corporate abuse.**

List of signatories

Academic professionals

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International organizations and regional networks

Anti-Slavery International

Amnesty International

Business & Human Rights Resource Centre (BHRRC)

European Center for Constitutional and Human Rights (ECCHR)

European Coalition for Corporate Justice (ECCJ)

Fair Finance International

International Alert

International Code of Conduct Association (ICoCA)

International Federation for Human Rights (FIDH)

International Service for Human Rights (ISHR)

Interpeace

Oxfam

Search for Common Ground (SFCG)

Women's International League for Peace & Freedom (WILPF)

National organizations and networks

11.11.11, Belgium

Acción Ecológica, Ecuador

Al-Haq, Palestine

Al-Marsad-Arab Centre for Human Rights in the Golan Heights

ALTSEAN BURMA, Myanmar

Association Marocaine pour les droits humains (AMDH)

Austrian Chamber of Labour Brussels Office (AK Europa), Austria

Centre for Research on Multinational Corporations (SOMO), the Netherlands
Centre national de coopération au développement (CNCD-11.11.11), Belgium
Centro de Políticas Públicas y Derechos Humanos, Perú
Civil Society Institute, Armenia
Colectivo de Abogados “José Alvear Restrepo” (CAJAR), Colombia
Comisión Ecuémica de Derechos Humanos (CEDHU), Ecuador
Covenants Watch, Taiwan
Christian Aid Ireland, Ireland
Facing Finance, Germany
Global Legal Action Network, United Kingdom
Heartland Initiative, United States
Human Rights Movement "Bir Duino-Kyrgyzstan", Kyrgyzstan
Justiça Global, Brazil
Ligue Burundaise des droits de l'homme Iteka, Burundi
PAX, the Netherlands
Polish Institute for Human Rights and Business, Poland
Swedwatch, Sweden
Trócaire, Ireland
Solsoc, Belgium
Syrian Center for Media and Freedom of Expression (SCM), Syria
The Human Rights Association (İnsan Hakları Derneği- İHD), Turkey
Vietnam Committee on Human Rights (VCHR), Vietnam
Vredesactie, Belgium