

Open letter from organisations representing indigenous peoples, forest communities and human rights defenders.

To:

Ursula von der Leyen

President of the European Commission

Virginijus Sinkevičius

Commissioner, DG ENV

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Director-General, DG ENV

Didier Reynders

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CC:

Charles Michel, President of the European Council

Hugo Marie Schally, Head of Unit ENV.F.3

Maija Laurila, Head of Unit JUST.A.3

Date: 31 March, 2021

Dear President, Commissioners and Director Generals:

Re: EU legislation and regulations on corporate governance, due diligence and forest risk commodities

We, the undersigned organisations, represent indigenous peoples, afro-descendant peoples and other peoples and communities with collective rights and traditions, as well as human rights, land and environmental defenders. We are rights holders who share an experience of collective ownership, management and use of our lands, territories and natural resources.

We welcome recent EU commitments and initiatives to develop regulatory measures to address harmful human rights and environmental impacts on our communities from business and financial activities linked to the EU. We especially welcome EU proposals for legislation requiring companies to undertake mandatory human rights and environmental due diligence to prevent and address existing and potential negative impacts on our communities, lands and territories. We likewise appreciate the openness of the EU to consider measures to ensure accountability of companies and financiers to victims of corporate-driven human rights abuses and deforestation.

The purpose of this communication to the European Commission is to recommend essential elements for effective EU legal measures to ensure responsible corporate conduct, sustainable supply chains and corporate accountability. To this end, by means of this letter we hereby call on the EU to ensure that its upcoming legislative measures are effective and fully uphold our rights as set out in international law, and in line with the EU's own commitments – both in proposed legislation on sustainable corporate governance involving a broad corporate duty to respect human rights and protect the environment, and in relation to EU regulations for forest risk commodities.

Rights and territories under threat from EU business activities, trade, finance and consumption:

For countless generations, our peoples – and our brothers and sisters around the world – have diligently taken care of our lands, territories and forests, which are the cornerstone of our knowledge, freedom and survival. The fact that we are better than anyone else at doing this is increasingly recognised by scientists and policy makers globally. Today however, our communities, forests, lands, hunting and gathering grounds, sacred sites, farms and waters are threatened, destroyed and stolen by corporate actors. These actors come from the outside – nearly always without our knowledge and consent – and are very often linked to expanding frontiers of global commodity production driven by international trade and consumption.

Over the years we have come to learn that many of the actors encroaching on our lands and forests, as well as those who finance or buy raw materials or products from them, have direct and indirect connections to the EU market, businesses and financial institutions. EU corporate actors grease the wheels of the global supply chains that connect our lands, homes and environment to the daily life and practices of citizens and consumers in the EU.

Rights under threat from EU business, trade and financing activities include our collective rights to self-determination, lands, territories and natural resources, culture, non-discrimination, water, food and a healthy environment. Through trade and consumption of products such as palm oil, meat, soy, cocoa, maize, timber etc, the EU is responsible for 10% of the global share of deforestation embodied in global consumption. Other examples of conflict commodities imported to the EU that affect the rights and freedoms of our peoples and communities include bananas, other fruits, coffee, sugar, pulp and paper, cotton and biofuels. In addition, beyond the EU's own consumption footprint, EU companies also play a pivotal role in (and draw profits from) deforestation and related human rights violations connected with commodities destined for consumption in other markets.

Existing voluntary measures and company initiatives are not working for us:

Numerous pledges, voluntary initiatives and policies have been adopted by companies and their financiers over the past decades to promote sustainable and rights-based operations and supply chains. But these have rarely made any practical difference to our communities on the ground who continue to suffer violations of their rights. Indeed,

business and market pressures on our territories are increasing, our communities are being repressed and our leaders are being killed at an unprecedented rate. Even in the middle of this global pandemic, the expansion of agribusiness and extractive industries is accelerating. So is the intimidation and criminalisation of those of us who stand up to defend our rights and territories.

The negative impacts on our lives and on Mother Earth also continue despite important commitments by the EU and its Member States to uphold and promote human rights in all external actions (including in trade), and despite the EU's self-proclaimed role as a leader in the fight against climate change and environmental destruction. A few important instruments supported by the EU include, among others, the EU Guidelines on Human Rights Defenders (2008), EU's Trade for All Policy (2015), the EU Action Plan on Human Rights and Democracy (2012-2014, 2015-2019, 2020-2024), the European Consensus for Development (2017), the UN Declaration on Indigenous Peoples (UNDRIP), FAO Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) and the UN Guiding Principles on Business and Human Rights (UNGPs).

Demands for effective, complementary and coherent EU regulatory measures:

The ongoing processes in the EU of assessing legal options for **regulating sustainable corporate governance and supply chains free from rights abuse and deforestation represent a unique opportunity** for the EU to fulfil its commitments to respect, protect and fulfil human rights, promote sustainable trade and require responsible corporate conduct, and fight the climate and biodiversity crises. While the current EU regulatory processes for supply chain and corporate governance reform are following two separate tracks, **together they offer the potential to deliver a strong and comprehensive legal framework provided that their development is coordinated and the final provisions are mutually supportive.**

In short, we believe that a cross-sectoral instrument on corporate governance should create an overall duty on EU companies to respect human rights and protect the environment. As part of fulfilling this duty, EU businesses (including investors) should be legally required to undertake human rights and environmental due diligence (HREDD). Most importantly, this legal instrument should ensure accountability, through establishing corporate liability and obligations to provide a remedy to our peoples and communities where they are adversely affected. The proposed targeted instrument on forest risk commodities that the EU is developing should complement this overarching approach, setting out specific, targeted requirements for businesses within commodity sectors that are particularly linked to deforestation and associated rights abuse.

We want to emphasise to the European Commission that it is essential that respect for human rights is integrated in **both** these aforementioned instruments under development. Human rights and the environment cannot be separated, and if deforestation legislation does not include human rights, these regulations will risk being in contradiction of one another, and may even cause or contribute to negative effects on our communities and territories.

In order for the ongoing legislative processes to lead to tangible positive results for human rights, people and forests, we believe that our grounded perspectives bring invaluable insights that the EU cannot afford to overlook. Crucially, the EU has legal obligations and it has made commitments to uphold human rights, including the rights of indigenous peoples. It has also pledged to ensure sustainable trade, to protect the global environment and to tackle climate change.

For all these reasons, we urge the Commission to ensure that **future legislative measures** seeking to catalyse the transition towards sustainable global supply chains and to reform corporate conduct to uphold human rights, halt deforestation, protect the environment, and tackle climate change, **must**:

1. Mandate all EU companies and investors to **undertake combined and integrated human rights and environmental due diligence** throughout their operations, supply chains and business partnerships.
2. Include norms and **requirements fully aligned with international human rights law and standards**, including specific rules and obligations in relation to collective rights to self-determination, customary lands/resources and free, prior and informed consent.
3. Require that **human rights and environmental impact assessments (HREIAs)** are carried out as a part of the due diligence process. These must include a thorough mapping of potentially affected rights holders as well as past or present land/resource conflicts. **Our communities that are already affected or potentially affected must be actively engaged in the assessments to identify impacts** – no outside actor should tell us what we are experiencing, how it feels or how important it is. The HREIA reports must be publicly available and actively shared with the rights holders.
4. Ensure that continued harms to our peoples and communities, including dispossession, and unresolved grievances caused by or connected to past or ongoing business operations and supply chains, are identified and adequately addressed. Our lands and territories are not mere possessions, they are a part of our body and soul. When we are displaced, the wound keeps bleeding until we are returned to our lands. Due diligence laws must recognise and **support the many indigenous, afro-descendant and other peoples and communities who are demanding restitution of their collective lands taken without their consent.**
5. Include provisions to ensure that our peoples and communities are the ones who decide what should happen if companies discover serious human rights and environmental impacts that affect our lands, territories and resources in their operations, supply chains or investments or otherwise affect our fundamental rights. **We insist that companies must consult with us and respect our priorities on how to address impacts**, in accordance with the core standard of free, prior and informed consent. Addressing impacts may mean development of time-bound and independently monitored action plans for improvement; temporary suspension, or permanent termination, of relationships between EU companies and abusive suppliers; the exclusion of non-compliant suppliers' products from the EU market, or other steps – but we should have a say in what is done.

6. Require **transparency of company and investor due diligence processes**, including an obligation to make public their plans and actual steps taken to mitigate and remedy rights violations and environmental damage, so that we can check that the actors are doing what they have promised and are required to do.
7. Establish a **dedicated and well-funded EU enforcement framework**. We are all too familiar with laws not being respected by those they are meant to regulate, so **independent verification** of compliance with the obligations – and when appropriate, with the measures taken to address impacts – will be essential to ensure that new EU regulations are effective. Many of our communities are already actively monitoring our lands, resources and encroachments by external actors, so we can provide valuable information to the assessment of compliance.
8. **Establish company and investor liability** for harms in their supply chains. It is important that European governments take responsibility for enforcement, but it is also important that we – the survivors of human rights violations – have **access to justice**. We know that companies' and investors' behaviour will only really change when their own profits are on the line – so it is important that they can be held liable when their activities cause or contribute to human rights violations or environmental damage. To enable this, **we recommend that victims of corporate abuse must have access to legal redress through courts in a company's or an investor's home country**.
9. Establish an **independent complaint and grievance system** that is easily accessible to our communities, in terms of language, cost and distance, and that provides effective remedy for harms experienced.
10. Contain robust safeguards and **requirements for solid corporate actions to improve safety and protection for human rights defenders and whistleblowers** who lodge complaints against a specific company or investor.

While the above serves as initial recommendations, we urge the Commission to ensure inclusion of the voices of human rights defenders, indigenous peoples, afro-descendant peoples, and other peoples and communities with customary tenure systems going forward in the process of developing a coherent legal framework to address human rights violations and deforestation in EU's trade and supply chains. Our organisations would welcome the possibility of engaging further with EC DG Justice and DG Environment teams working on regulatory measures in 2021-22.

Finally, we believe that **complementary non-regulatory measures** will be key to the effectiveness of any future legislation. We therefore also welcome future dialogue and collaboration with the EC to 1) explore how technical and financial support to producer countries can best catalyse the recognition and protection of our rights through policy, legal and judicial reform as well as direct funding for our own land tenure security and forest protection and monitoring initiatives and 2) ensure that other EU investments and external actions in our countries (e.g. in relation to agriculture, transportation, infrastructure, climate change and conservation) do not have negative impacts on our rights and territories. Progress in these areas will also contribute towards the EU's goals to address the global environmental, biodiversity and climate change crises.

Signed by the following rights holder organisations:

Amerindian Peoples Association (APA), Guyana

Asia Indigenous Peoples Pact (AIPP), Thailand

Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP), Peru

Association of Indigenous Village Leaders (VIDS), Suriname

Consejo Regional Indígena del Cauca (CRIC), Colombia

Coordinador General, Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica (COICA), Ecuador

Community Empowerment and Social Justice Network (CEMSOJ), Nepal

Federación de Pueblos Indígenas Kechua Chazuta Amazonía (FEPIKECHA), Peru

Federación Indígena Empresarial y Comunidades Locales de México. A. C., Mexico

Federación por la Autodeterminación de los Pueblos Indígenas (FAPI), Paraguay

Fundación para la Promoción del Conocimiento Indígena (FPCI), Panama

Organizaciones de Poblacion Desplazada, Etnicas y Campesinas (OPDS), Colombia

Organización Nacional de los Pueblos Indígenas de la Amazonia Colombiana (OPIAC), Colombia

Organización Nacional Indígena de Colombia (ONIC), Colombia

Palenke Alto Cauca, Colombia

Proceso de Comunidades Negras (PCN), Colombia

Rede de Cooperação Amazônica (RCA), Brazil

Red Indígena de Turismo de Mexico (RITA), Mexico

Resguardo Cañamomo y Lomapieta (RCMLP), Colombia

Secretaría Técnica Indígena de la Comisión Nacional de Territorios Indígenas (CNTI), Colombia

Sengwer Indigenous Peoples Programme (SIPP), Kenya

Sengwer Of Embobut CBO, Kenya

TuK INDONESIA, Indonesia

United Organisation for Batwa Development in Uganda (UOBDU), Uganda

Yayasan Pusaka Bentala Rakyat, Indonesia

Wumweri Ghodu, Kenya

Endorsed by:

Actions pour la Promotion et Protection des Peuples et Espèces Menacés (APEM),
Democratic Republic of Congo, DRC

Center for Development Programs in the Cordillera, Philippines

Cercle des droits de l'Homme et de développement (CDHD), DRC

Corporación Desarrollo Solidario, Colombia

Iepé - Instituto de Pesquisa e Formação Indígena, Brazil

Indepaz, Colombia

Public Association "Dignity", Kazakhstan

Réseau Congolais des Forestiers de la RDC (RCF-RDC), DRC

Réseau Ressources Naturelles (RRN), DRC

Social Entrepreneurs for Sustainable Development (SESDev), Liberia

Sustainable Development Institute (SDI), Liberia