

Recommendations for material scope (human rights) in the Corporate Sustainability Due Diligence Directive

The document has been prepared by Amnesty International, Anti-Slavery International, Clean Clothes Campaign, European Center for Constitutional and Human Rights, European Coalition for Corporate Justice and International Federation for Human Rights (FIDH) and to provide recommendations on material scope (human rights) ahead of trilogue discussions on the Corporate Sustainability Due Diligence Directive (CSDDD). The recommendations pertain to Article 3(c) - the definition of adverse human rights impact - and Annex I, Part I (Sections 1 and 2).

Recommendations

- 1. Include a strong definition of adverse human rights impact:**
 - Remove Council conditions:** Delete the conditions added by the Council to the definition of adverse human rights impact in Article 3c.
 - Removing 'violation':** Adverse human rights impact under Article 3c should be defined as 'any action which removes or reduces the ability of an individual or group to enjoy the rights or to be protected by prohibitions' as in the Parliament position, rather than as a violation of the rights listed in Annex I.
- 2. Include a broad human rights scope in Annex I Part 1 Section 1 & 2:**
 - Retain a broad list of human rights in Annex I Part 1 Section 1:** Retain the longer list of human rights included in Annex I Part I as in the European Parliament's position.
 - Include core treaties in Annex I Part 1 Section 2:** Ensure, at the minimum, the inclusion of the International Bill of Human Rights, core international human rights treaties and fundamental ILO conventions.
 - Include international humanitarian law in Annex I Part 1 Section 2:** Ensure International humanitarian law is included.
 - Include other international human rights treaties:** Ensure other relevant human rights treaties are included.
 - Include relevant non-binding international instruments:** Ensure other relevant human rights instruments are included.
- 3. Require regular updates of Annex I Part 1 Section 2:** Ensure a clause requiring regular updates of the annex is included.

Recommendation 1: Include a strong definition of adverse human rights impact.

1a. Remove Council conditions from definition of adverse human rights impact.

The Council of the EU defined adverse human rights impact under Article 3c as follows:

‘Adverse human rights impact’ means an impact on persons resulting from

(i) an abuse of one of the human rights listed in the Annex I, Part I Section 1, as those human rights are enshrined in the international instruments listed in the Annex I, Part I Section 2;

(ii) an abuse of a human right not listed in the Annex I, Part I Section 1, but included in the human rights instruments listed in the Annex I, Part I Section 2, provided that

- *The human right can be abused by a company or legal entity other than a Member State or a third country or their authorities;*
- *The human right abuse directly impairs a legal interest protected in the human rights instruments listed in the Annex I, Part I Section 2; and –*
- *The company could have reasonably identified such human right abuse in its own operations, those of its subsidiaries or its business partners, taking into account the circumstances of the specific case, including the nature and extent of the company’s business operations and its chain of activities, characteristics of the economic sector and geographical and operational context.*

The conditions added under (ii), have the effect of limiting the scope of human rights companies will have to consider during their due diligence under the CSDDD. The conditions would mean that companies would not have to consider any human rights impacts related to State actors. They would also mean that companies would only have to look at impacts on the human rights listed in Part 1 Section 1 of Annex I, and not the more extensive coverage of Part 1 Section 2. This more extensive coverage would only have to be considered in relation to a company’s *own* operations (for further information please see [‘Undue limitations to the scope of human rights due diligence in the EU Council position’](#)).

The attempt to limit the scope of human rights companies will be required to assess in this manner is at odds with the indivisibility and interdependence of human rights. These conditions add unnecessary restrictions to the CSDDD due diligence duty meaning it is no

longer aligned with international business and human rights standards. Retaining these conditions would add an additional evidentiary burden to victims who attempt to bring civil claims under the CSDDD as well as create additional complexity for companies as they would mean companies would have to assess whether or not each potential human rights impact meets the three conditions which are themselves complex.

Furthermore, given that the CSDDD will cover a broad range of sectors, it is important that companies are afforded flexibility to focus on their most salient adverse human rights impacts (as per a risk-based approach). For example, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas outlines a number of serious abuses associated with the extraction, transport or trade of minerals which companies working in that sector should focus on in their due diligence. One of those abuses is widespread sexual violence which is not comprehensively included in Annex I Part 1 Section 1 in any of the three positions.¹ Similarly the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector identified sexual harassment and sexual and gender-based violence in the workplace as key risk. This has in turn spurred garment companies to give a specific interest to such risk in their due diligence process.² Under the Council's approach, companies would not have to assess or address this risk in relation to their value chain despite their being a high risk in their sector. Limiting obligations in relation to a company's value chain only to the rights listed in Annex I Part 1 Section 1 is therefore neither effective at addressing human rights impacts nor practical for businesses.

We strongly recommend that the conditions introduced by the Council in the definition of adverse human rights impact in Article 3c are removed in the final text.

1b. Remove 'Violation' from adverse human rights impact definition.

The use of the term 'violation' in the definition of adverse human rights impacts risks raising the threshold for what would be considered an adverse human rights impact and could therefore have onward impacts on which human rights impacts companies address, and on how straightforward it is for victim to prove the failure of the company to conduct sufficient human rights and environmental due diligence in court.

We strongly recommend that the word violation is not used to define an adverse human rights impact in Article 3c.

¹ Prohibition of all forms of slavery including extreme sexual exploitation and the prohibition of human trafficking are included in all three positions but not all forms of sexual violence.

² The development of binding agreements dedicated to addressing gender-based violence and harassment such as the *Lesotho Agreement* or the *Dindigul Agreement* in Tamil Nadu, India is evidence of the growing understanding of such issues by the fashion industry. Companies such as H&M, Gap or Levi's have already joined such initiatives as a way to help them prevent, address and remedy gender-based violence.

Recommendation 2: Broad human rights scope in Annex I Part 1 Section 1 & 2

2a: Retain a broad list of human rights in Annex I Part I Section 1

Please note, this recommendation becomes even more important if “Recommendation 1a: remove council conditions” cannot be implemented, as this will mean companies only have to conduct human rights and environmental due diligence with respect to the list of rights included Annex I, Part I in relation to their value chain. It is therefore important that this list is as expansive as possible.

The rights and prohibitions that are included in all three positions must all be retained in the final agreement.³

The rights that are not included in all three positions and therefore potentially under discussion are as follows:

Human right	Excluded by
Right to an adequate standard of living for themselves and their family as a stand-alone article	Commission and Council
Prohibition of human trafficking	Council

³ These consist in:

- Right to life and security
- Prohibition of torture, cruel, inhuman or degrading treatment
- Right to liberty and security
- Right to privacy
- Right to freedom of thought, conscience and religion
- Right to enjoy just and favourable conditions of work, e.g. fair wage, decent living, safety
- Right to access adequate housing, and of adequate food, clothing, water and sanitation in the workplace
- Prohibition of employment of a child under the age at which compulsory schooling is completed
- Prohibition of worst form of child labour (EC and Council also included prohibition of child labour)
- Prohibition of forced labour
- Prohibition of all forms of slavery
- Right to freedom of association, assembly, organise and collective bargaining
- Prohibition of unequal treatment in employment
- Prohibition of causing measurable environmental degradation, e.g. water or air pollution
- Prohibition of unlawful eviction from land which used for livelihoods

Right to an adequate living wage	Commission* <i>although please note the Commission does include right to a fair wage and decent living</i>
Right to a living Income	Commission and Council
Rights of Indigenous peoples to self-determination and to give or withhold their free, prior and informed consent	Commission and Council
Rights of Indigenous peoples to their lands, territories, and resources	Council
Right to dispose of a land's natural resources and to not be deprived of subsistence	Council
Children's rights (beyond prohibition of the worst forms of child labour)	Council

Although rights are indivisible and interdependent, and therefore all rights under Annex I Part 1 Section 2 must be considered by companies during their due diligence, the choice to highlight a few *key* rights in Annex I Part I Section 1 will inevitably mean companies see these as particularly important. This list should therefore be as expansive and relevant as possible. All of the rights under discussion during Trilogue are rights that are often impacted by the operations of companies, and therefore deserve explicit reference in Annex I Part I Section 1 to underscore their importance.

Companies linked to natural resource extraction, infrastructure projects, large scale agriculture and conservation are particularly at risk of adversely impacting the rights of Indigenous peoples. Retaining references to the rights of Indigenous peoples in Annex I Part I Section 1 is therefore crucial.

Since General Comments on Economic, Social and Cultural Rights, namely here number 23 on the right to just and favourable conditions of work, are not referenced in the CSDDD, maintaining an explicit mention to the right to an adequate standard of living for themselves and their family will bring important context to how the right to fair wage, decent living and/or an adequate living wage should be understood by companies during their human rights and environmental due diligence.

We recommend that the list of human rights included in Annex I Part I Section 1 is in line with the European Parliament's position.

2b. Inclusion of core treaties

The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) are clear that companies should at a minimum refer to the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the International Labour Organization's (ILO) fundamental conventions as set out in the Declaration on Fundamental Principles and Rights at Work.⁴

Given the Commission, Council and Parliament all include the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* and fundamental ILO Conventions in Annex Part 1 Section 2 we assume there is a strong consensus on including these instruments. It is important to note however that the list of ILO core conventions included in the Commission proposal is outdated as two more instruments were declared fundamental at the 110th session of the International Labour Conference in June 2022. The *Occupational Safety and Health Convention*, 1981 (No. 155) and the *Promotional Framework for Occupational Safety and Health Convention*, 2006 (No. 187) are now considered to be fundamental ILO Conventions. The European Parliament made the correction in their position on the CSDDD, and this should also be reflected in the final trilogue agreement.

We would also strongly recommend including all nine core human rights treaties in Annex I Part 1 Section 2.⁵ It should be noted that the all core UN treaties with the exception of the *International Convention on the Protection of the Rights of All Migrant Workers and Members*

⁴ The eleven fundamental instruments are:

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
Abolition of Forced Labour Convention, 1957 (No. 105)
Minimum Age Convention, 1973 (No. 138)
Worst Forms of Child Labour Convention, 1999 (No. 182)
Equal Remuneration Convention, 1951 (No. 100)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Occupational Safety and Health Convention, 1981 (No. 155)
Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

⁵ The nine core UN human rights treaties are:

The International Convention on the Elimination of All Forms of Racial Discrimination;
The International Covenant on Economic, Social and Cultural Rights;
The International Covenant on Civil and Political Rights;
The Convention on the Elimination of All Forms of Discrimination against Women;
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
The Convention on the Rights of the Child;
The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
The Convention on the Rights of Persons with Disabilities; and
The International Convention for the Protection of All Persons from Enforced Disappearance.

of Their Families and the *International Convention on enforced disappearances* have been ratified by all EU member states.

We recommend that Annex I Part I Section 2 includes the International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), the core international UN human rights treaties,⁶ and the fundamental ILO conventions⁷ at a minimum.

2c. Inclusion of International humanitarian law

In situations of armed conflict, international humanitarian law binds both State and non-State actors, including businesses, whose activities are closely linked to the armed conflict. If business enterprises commit or knowingly assist others e.g., contractors, subsidiaries, or clients in conducting breaches of international humanitarian law, there is also a significant risk of being held criminally or civilly liable for war crimes. All companies operating in situations of armed conflict should therefore already be analysing their potential impact on the conflict. Given the close links between international human rights law and international humanitarian law, the UN Guiding Principles also clearly state that the responsibility of companies to respect human rights extends to the principles outlined in the standards of international humanitarian law during armed conflict.

We recommend that the CSDDD Annex I Part I Section 2 includes international humanitarian law.

2d. Inclusion of other international human rights treaties

The UN Guiding Principles and OECD Guidelines are clear that, where relevant, companies will also have to refer to additional international human rights treaties and instruments which

⁶ *ibid*

⁷ The eleven fundamental ILO instruments are:

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)

Abolition of Forced Labour Convention, 1957 (No. 105)

Minimum Age Convention, 1973 (No. 138)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Equal Remuneration Convention, 1951 (No. 100)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Occupational Safety and Health Convention, 1981 (No. 155)

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

provide further specificity on the rights of particular groups. For companies who may impact on the rights of these groups, these additional treaties provide further clarity on those rights. Clarity which will be useful for companies to ensure their human rights and environmental due diligence is effective.

Furthermore, the international human rights legal framework was never intended to be understood as separate and divisible treaties. As stated by the UN Office of the High Commissioner for Human Rights (OHCHR) “it is necessary to read all the human rights treaties to which a State has become a party together. Although separate and free-standing, the treaties also complement each other, with a number of principles binding them together... All the treaties based on these common principles are interdependent, interrelated and mutually reinforcing, so that no right can be fully enjoyed in isolation, but depends on the enjoyment of all the other rights.”⁸

It should be noted that the additional UN treaties added by the European Parliament in their CSDDD position have been ratified by all EU member states, the *OECD Anti-Bribery Convention 1997* has been ratified by all EU member states that are also OECD countries and are therefore able to ratify the text, and the Council of Europe *Convention on preventing and combating violence against women and domestic violence* has been signed by all EU member states (although not ratified by 6 EU states including: Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia). However, EU policymakers should be mindful that signing a treaty but not ratifying it still creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.⁹

We recommend that a broad list of human rights instruments is included in Annex I Part 1 Section 2.

2e. Inclusion of non-binding international instruments

For circumstances where there is no specific treaty which elaborates on the rights of a particular group, e.g. Indigenous peoples, declarations can instead be used to provide useful context and specificity to companies conducting human rights and environmental due diligence.

For example, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is an internationally agreed-upon baseline for Indigenous rights. It does not add additional rights which are not already included in the international human rights legal framework, but it does add specificity on how these rights apply to Indigenous peoples. While it is true that the committees overseeing the International Covenant on Civil and Political Rights and

⁸ [Fact Sheet No. 30 \(Rev. 1\): The United Nations Human Rights Treaty System | OHCHR](#)

⁹ [Vienna Convention on the Law of Treaties \(1969\)](#)

International Covenant on Economic Social and Cultural Rights have made clear that these covenants require that Indigenous peoples' rights be respected, including the right to self-determination and to give or withhold their free, prior and Informed consent, the actual covenants themselves don't mention Indigenous peoples explicitly. For businesses whose operations or value chains may impact on the rights of Indigenous peoples, and who may not have in-depth knowledge of international human rights law, spelling out the requirements with respect to Indigenous peoples rights by including the UNDRIP in the annex is important and would provide companies with clarity about what is expected of them.

We recommend that a broad list of human rights instruments is included in Annex I Part 1 Section 2.

Recommendation 3: Require regular updates

International human rights and humanitarian law continually update and progress. Even during the process of developing the CSDDD, the International Labour Organization added additional fundamental conventions related to Occupational Safety and Health¹⁰, meaning that these should be considered part of the due diligence duty whether or not the country in which the entity concerned in the value chain is located has ratified the ILO conventions. In order for the CSDDD to remain in line with international human rights law, and for company due diligence to effectively address their human rights risks and impacts, it is important that the CSDDD be able to include new international instruments to Annex I Part I Section 2 as they arise.

Stemming from the experience of the French *Devoir de vigilance* law of 2017, the French Parliament's EU affairs committee published a report in June 2023 with recommendations for the upcoming CSDDD. The report stresses the need for a built-in mechanism to update the Annex of the future directive, so that the definition of protected international human and environmental rights remains sufficiently open and can be supplemented as necessary.¹¹

We recommend that the list of international instruments in Annex I Part I Section 2 be regularly updated.

¹⁰ Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

¹¹ [Rapport d'information](#) déposé par la commission des affaires européennes sur le devoir de vigilance des entreprises en matière de durabilité, recommandation n° 2