

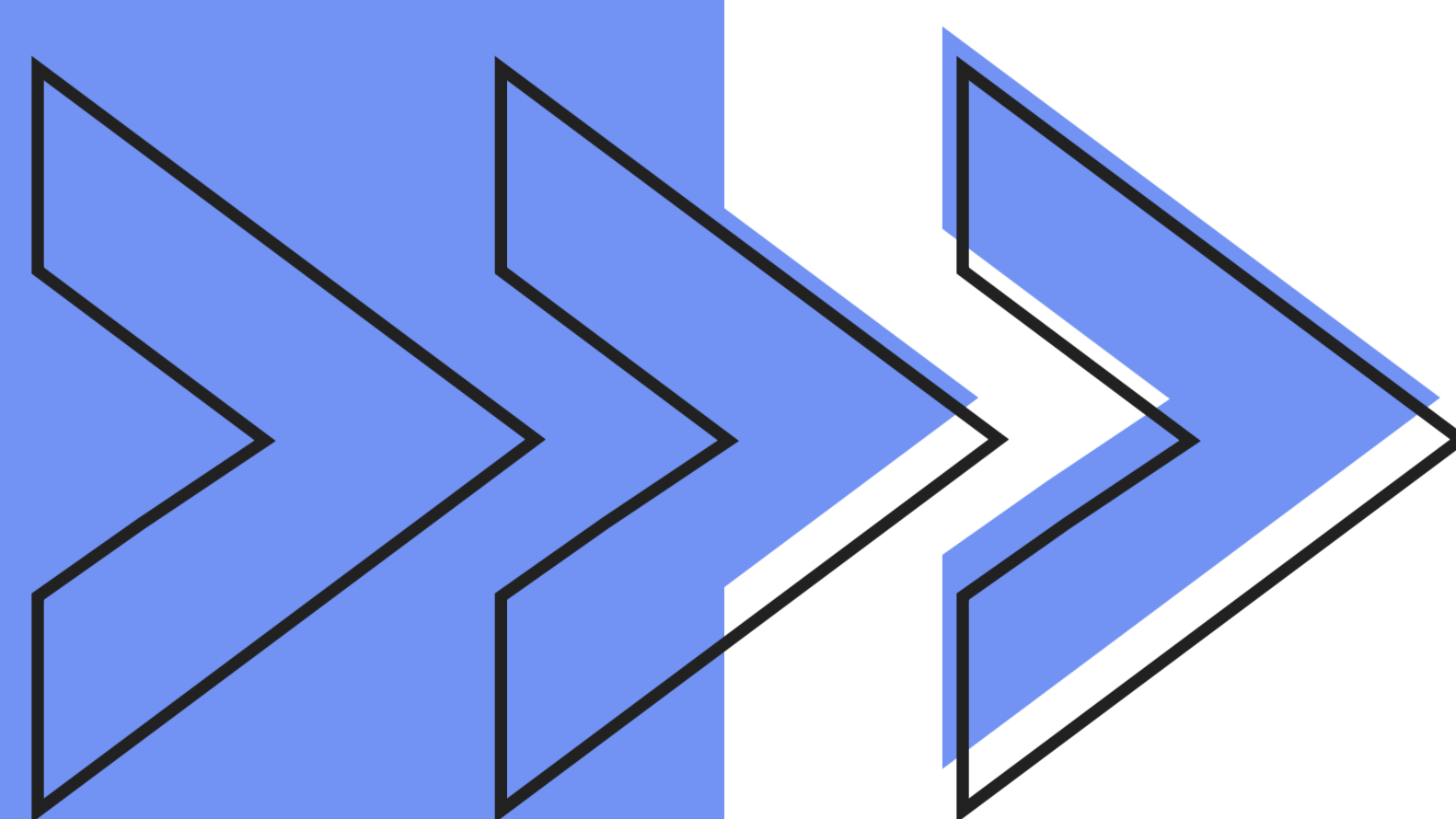
JUSTICE IS EVERYBODY'S BUSINESS

A story of campaigners taking on corporate giants - and winning



BUND-Jörg Farys

IS THE EU'S NEW LAW UP TO THE TASK?



Philip Reynaers / FoE Europe

This summer, the European Union took a significant step towards greater corporate accountability.

On July 25, 2024, long-awaited legislation came into force requiring large companies to identify human rights abuses and environmental damage in their chain of activities and take measures to address them. These obligations are now enshrined in the EU's "Corporate Sustainability Due Diligence Directive" (CSDDD).

Companies will have to compensate victims of corporate abuse, who will now be able to seek justice in national courts in the EU. Crucially, it applies to businesses operating in almost all sectors, and establishes a clear connection between environmental damage, climate change, and human rights.

The new law is the result of a hard-fought campaign by civil society in the face of years of fierce industry lobbying, political backsliding and broken promises. While campaigners welcome the legislation as a signal that the EU recognises it must do more to hold corporations to account, they also denounce the deeply unfair political process and a final text riddled with loopholes that falls far short of the ambition required.

“These corporations [...], they bring stories of economic growth, they bring stories of hope... but they don’t tell [communities] that they’re going to lose their land without fair compensation. They don’t tell them that these projects will be near their lakes, swamps, and game parks. They don’t tell them what will happen afterwards,” says Nicholas Omonuk, a young climate activist from Uganda.

Omonuk’s own family and community have been profoundly affected by prolonged droughts, which spurred him to explore the connection between the fossil fuel industry and climate change. Among these is the East African Crude Oil Pipeline (EACOP), a project to transport crude oil from vast oilfields in Uganda and Tanzania and sell it on to world markets. French corporation TotalEnergies is the majority owner of the pipeline (62%).

The oil project has led to the massive displacement of communities living in the area under development and threatens the fragile ecosystem (the oil fields lie within a national park).

The already devastating impacts of the projects are only set to get worse as the pipeline is an example of a “carbon bomb” – **the burning of oil extracted through EACOP is expected to emit 379 million tons of climate-heating pollution**, over 25 times the combined annual emissions of Uganda and Tanzania.

“ ***There’s a real risk that companies may exploit the energy transition as an excuse to inflict more harm under a ‘good cause.’*** ”

Nick Omonuk
Fridays For Future MAPA



NATIONAL LEGISLATION FALLS SHORT AS INJUSTICES PERSIST



Prior to the EU-wide corporate accountability law, cases of corporate destruction like EACOP could only be taken to national courts, even when the company owning the project was based in the EU.

When Maxwell Atuhura, a Ugandan human and environmental rights defender, saw that “oil companies were taking away people’s land without enabling them to continue with their livelihood,” he knew he had to act. At first, he tried to support his community by providing legal knowledge about their rights and attracting media attention to what was happening.

“But still the violations continued, so I felt another strategy would be taking a legal action.” In 2019, Atuhura and other campaigners filed a court case in France against TotalEnergies.

The first lawsuit to be brought under France’s new Duty of Vigilance Law, it claimed TotalEnergies had not effectively implemented a due diligence plan for EACOP.

The protracted and difficult process they faced lasted several years and starkly illustrated the obstacles facing plaintiffs and the flaws in the French law, with vague provisions and inadequate means of enforcement. Despite a successful appeal to have the matter decided in a civil court, “in the end it was dismissed on procedural grounds,” explains Atuhura.



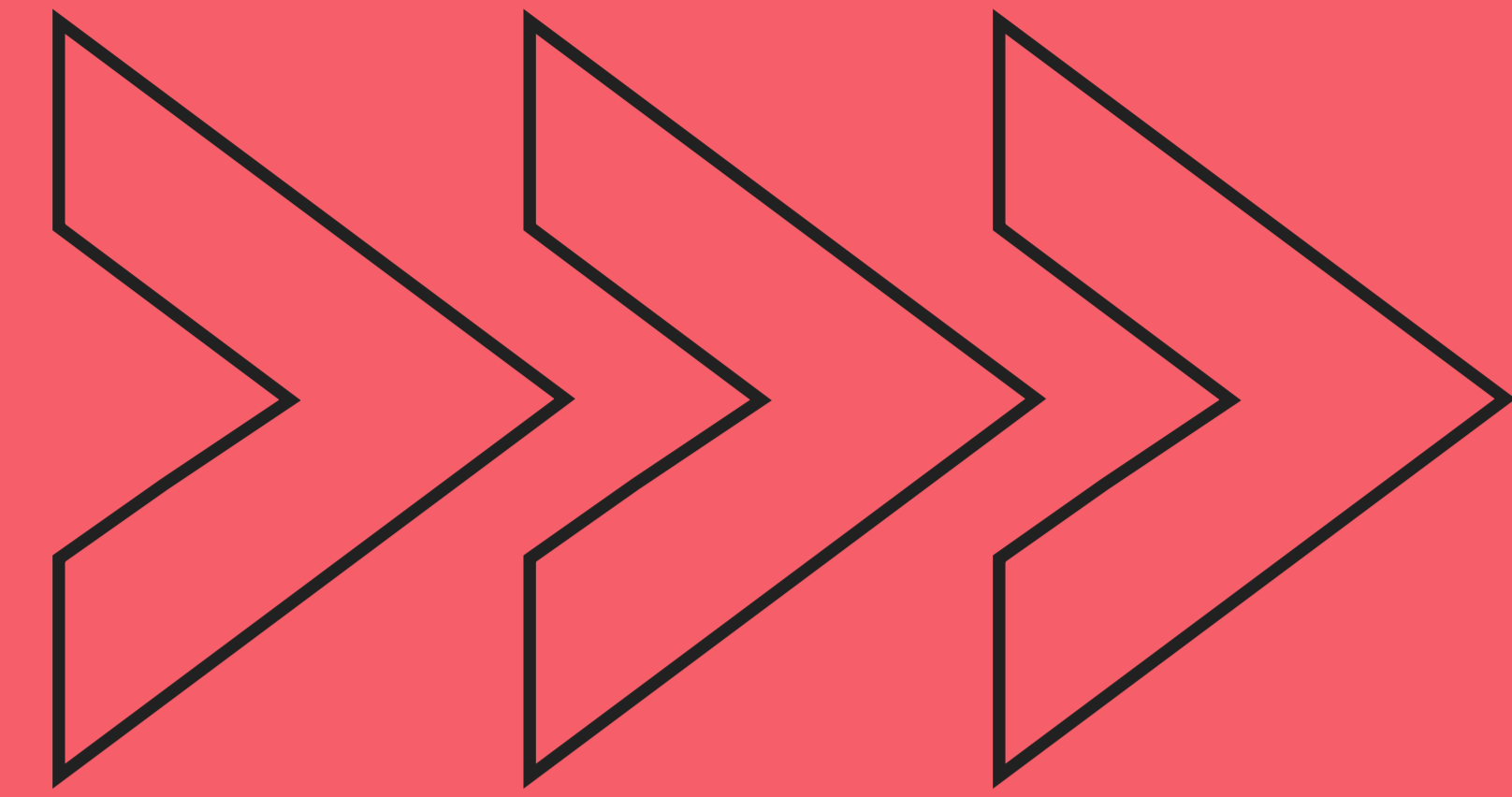
@stopeacop



TotalEnergies

“The judge could not rule effectively on the law. We felt that was not fair. The merits of the case were not decided on.”

A PATTERN OF ABUSES



TotalEnergies has also been responsible for large-scale human rights violations in Mozambique, in connection to the development of its LNG project in the province of Cabo Delgado. Rural populations have been resettled at great cost to their livelihoods, dignity, and autonomy.

Erika Mendes, an activist with Justiça Ambiental! (Friends of the Earth Mozambique), and other activists began to identify a pattern in the behaviour of multinational companies developing projects based on extraction and export in the Global South. The vast amounts of land needed led to the displacement of already marginalised people, causing huge upheaval and damage. When the resulting problems became unmanageable, the companies would sell their assets and leave, making it even harder for communities to hold the perpetrating company accountable.

“We realised that there's no real division between the environmental impacts and the social impacts of this model of development, when people are so intrinsically linked to the land and the nature on which they depend, but also that they help to preserve,” says Mendes.

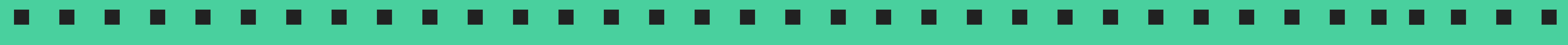
An important factor is the colossal economic power of these companies, particularly relative to global south economies; many big European oil companies' annual revenue is several times the GDP of smaller Global South nations. This asymmetry in power, exacerbated by collusion with corrupt government officials, means victims face many barriers to achieving justice.

“These big transnational corporations make lots of pledges and tell the world that they adhere to strict environmental and human rights standards, and they have quite a reputable image.” Along with the complexity of their structures, “this makes it easier for them to obscure the impacts of their extractive activities and protects them from liability,” Mendes explains. This disconnect between the rhetoric of mother companies in the countries where they are headquartered and the reality in places where they operate demonstrated the need for a more holistic approach:

“It made us realise that we need to tackle this problem not only at the local level, by mobilising, empowering, and educating people about their rights under domestic legislation, but it also requires some kind of articulated global effort to deal with this global problem,” she says.



CONNECTING THE DOTS BETWEEN THE LOCAL AND INTERNATIONAL



The power of joining forces was demonstrated in 2008: four farmers from the Niger Delta region, together with Milieudefensie (Friends of the Earth Netherlands), launched a case against Shell in The Hague, demanding they take responsibility for the disastrous consequences of oil spills in Nigeria.

Shell argued that it was not responsible for the actions of its subsidiary in Nigeria and that the case should be heard in a Nigerian court, delaying the case by several years. **In 2021, the activists won the case, and the court ordered Shell to pay compensation to the farmers and install a leak warning system.** The verdict was a landmark: for the first time in history, a parent company was held responsible for the actions of its subsidiary in another country.

The cases of the Niger Delta, Mozambique, and Uganda are just some of many stories which paint a striking picture of what Mendes describes as ***“the architecture of corporate impunity”*** – exposing the violations of European companies and the often insurmountable barriers to achieving justice for those affected.

This systemic prioritisation of profits over people and the environment is at odds with the EU’s professed commitments to human rights, environmental protection, and the fight against climate change. Despite the existence of international business and human rights standards laid out by the United Nations and the OECD, and initiatives by several national governments, **the persistence of these abuses shows existing governance systems are fundamentally ill-equipped to tackle violations that occur in value chains.** The growing consensus around the need for a harmonised approach throughout the EU led to an ambitious campaign for binding European legislation on companies.



GATHERING MOMENTUM



In 2020, EU Justice Commissioner Didier Reynders committed to bringing forth a legislative proposal on mandatory due diligence obligations for EU companies. Later that year, an open public consultation asked citizens and organisations for input ahead of the proposed legislation. In total, around half a million contributions were collected in favour of a strong new EU law. This combination of tangible political and public support for binding regulation signalled a shift away from the prevailing approach of allowing business to regulate itself. Civil society organisations were determined to seize this opportunity to push for real change.

To achieve this, strong arguments and sound legal proposals would not be enough, as Paul de Clerck, Economic Justice Coordinator at Friends of the Earth Europe (FoEE) recognised.

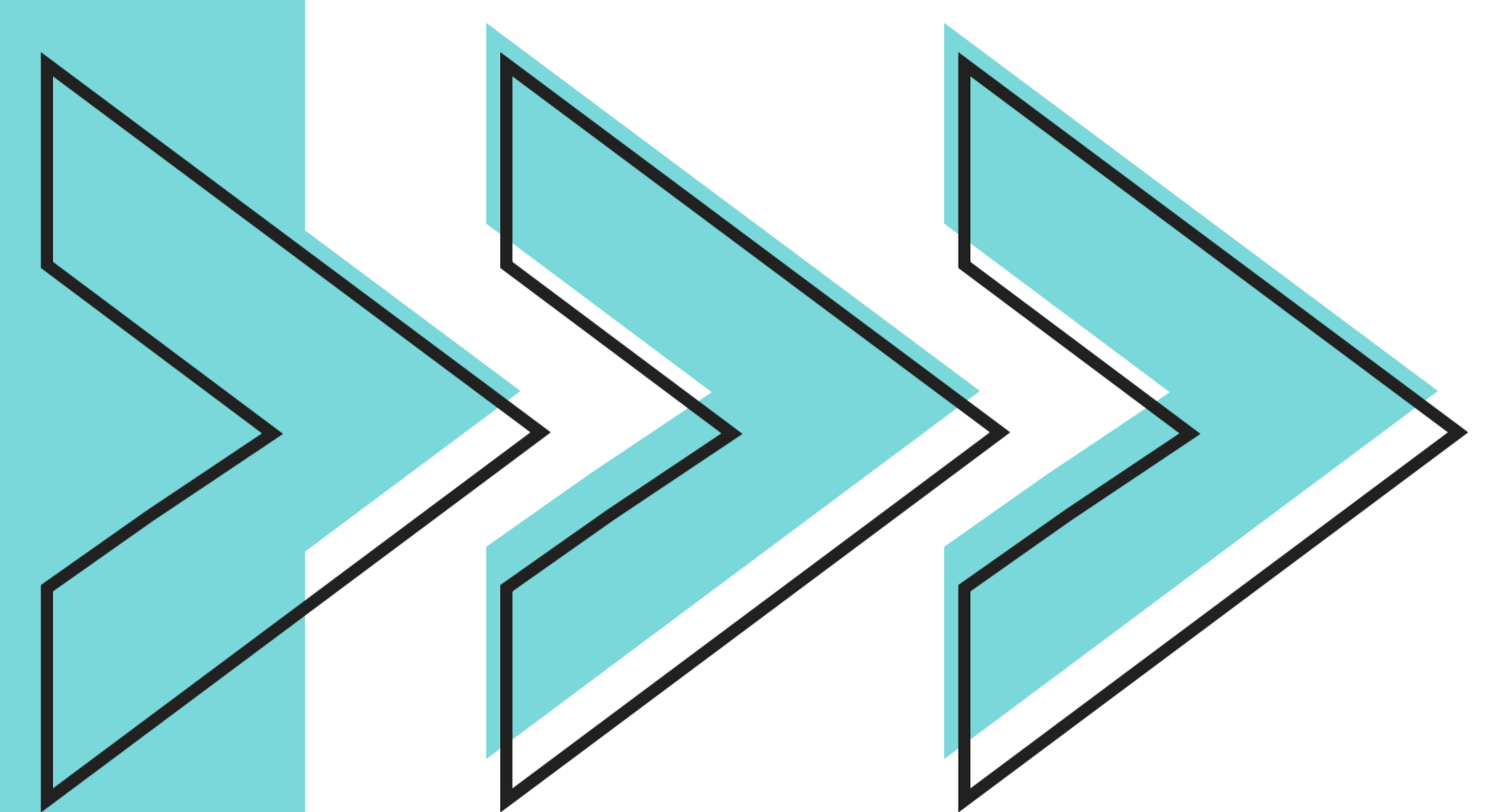
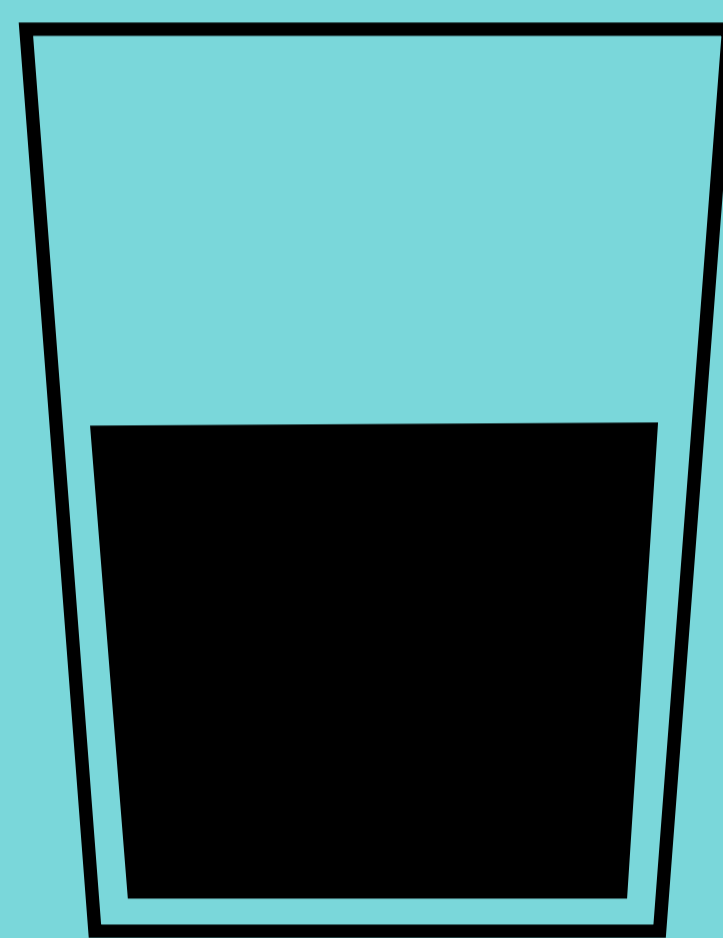
“We also need to build public support and public power,” he said.

This was the catalyst for launching an Europe-wide campaign: Justice Is Everybody’s Business (JIEB).

A broad coalition of civil society organisations and trade unions came together to devise a strategy and identify their key demands. **It was important for this process to be as inclusive as possible**, explains Sylvia Obregon Quiroz, Policy Officer at the European Coalition for Corporate Justice (ECCJ), a civil society network bringing together over 480 NGOs, trade unions and academic institutions. This meant “finding the commonalities where other movements’ main priorities overlapped with corporate accountability as well.” Access to justice for victims, climate commitments, and workers’ rights were among the priorities determined.

Campaigners carried out common actions, such as taking a 10-metre-high inflatable statue of Lady Justice stabbed in the back on a tour of European cities, to raise awareness in different locations while linking the various campaigns together. Activists and representatives of civil society groups in the Global South were also invited to participate and to address policymakers in Brussels and around Europe and share their insights.

A GLASS HALF FULL



FoE Europe / Philip Reynaers

The CSDDD was adopted in May 2024. In the immediate aftermath, “I think we are all relieved,” said Anna Leitner, campaigner with GLOBAL 2000 (Friends of the Earth Austria).

“That all those years of hard work cumulated in a law. We knew from the start it was a hard negotiating position to start with no law at all.”

De Clerck considers it a “watershed,” in that, “it’s finally been acknowledged that the self-regulation approach has failed, and governments accept that they need to regulate business behaviour with regard to the environment, climate, and human rights.”

A vital achievement are the provisions allowing communities around the world to take Europe-based companies to court in Europe if they fail to respect their due diligence obligations properly. **The law also crucially represents a shift towards holding companies accountable for their colossal carbon footprint.**

Despite these achievements, civil society groups also highlighted important gaps in the legislation and expressed frustration with the process of achieving it. **The requirements for climate transition plans are inadequate:** companies will be obliged to make them, but if they fail to do so, victims won't be able to take them to civil courts for damage in case of harm. And the financial sector is exempt from almost all due diligence obligations.

Significantly, the new law fails to reverse the burden of proof: victims still have to prove that a company did not carry out proper due diligence. "That is extremely difficult as they don't have access to company documents," de Clerck explains. Moreover, ***"the corporate veil has not been lifted by making mother companies automatically liable for abuses created by their subsidiaries,"*** he adds. "Such a step would have prevented Shell from arguing for years that they should have been taken to court in Nigeria instead of the Hague."

While the law makes due diligence mandatory for companies, corporations may still be exempt from legal responsibility if harm occurs in their supply chain, as long as they conducted due diligence and measures deemed "adequate" to prevent harm. For the campaigners, this is a crucial point. ***"What we want is for the violations not to occur," sums up Mendes, "And when they do occur that there is liability. So rather than an obligation of means, we want an obligation of results."***

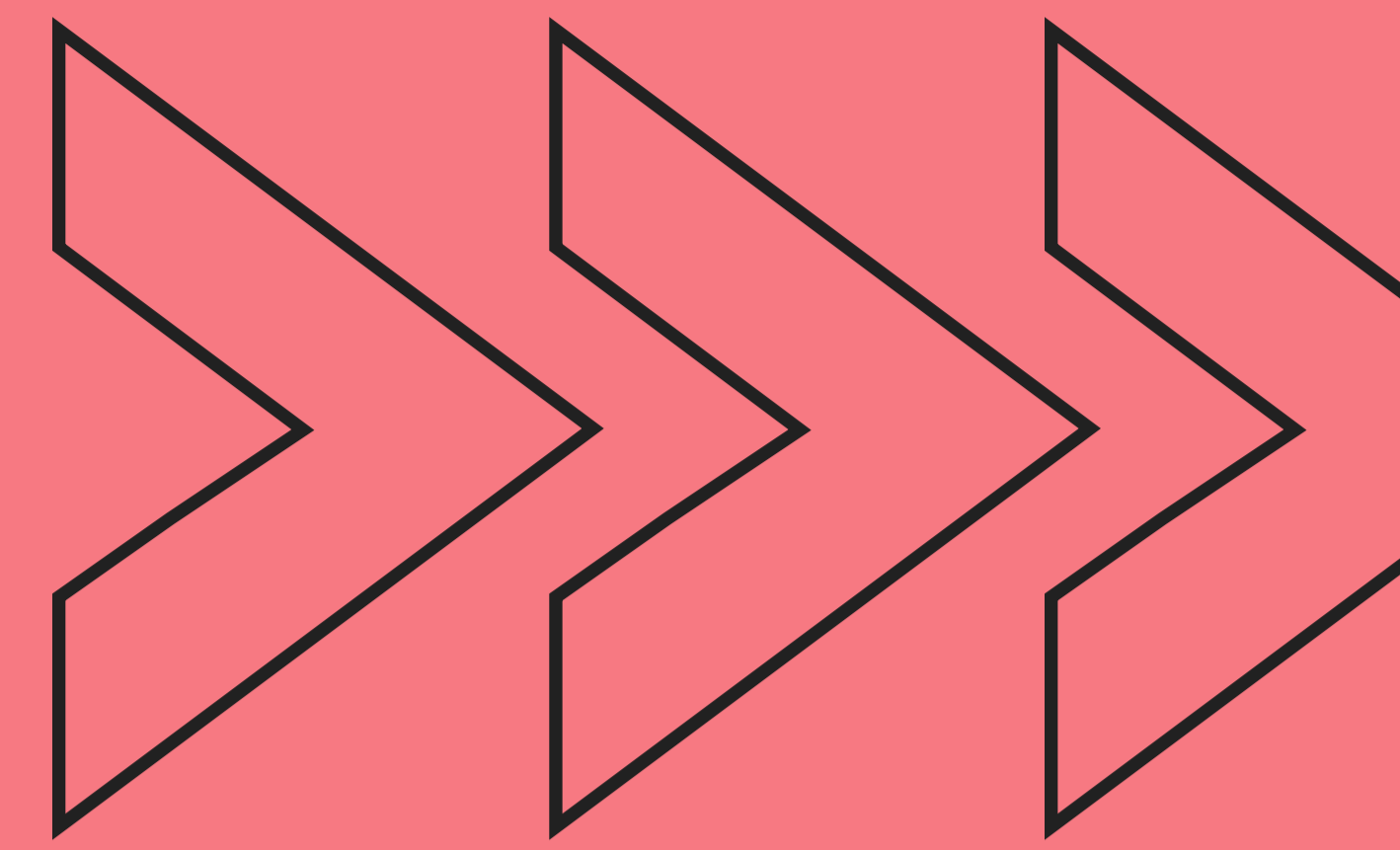


“ **The *environmental devastation* caused by businesses in our communities is not just an ecological crisis - it's a threat to our very existence.** ”

Maxwell Atuhura
STOP EACOP activist



A STORY OF POLITICAL GAMES AND BUSINESS LOBBYING



Many of the loopholes and weaknesses of the CSDDD can be traced to the intense corporate lobbying and political wrangling as the file progressed through the European institutions. The years following the Commission's initial proposal witnessed a legislative process fraught with delays and blockages.

Although the European Parliament's resolution on due diligence, adopted in June 2023, contained many of the demands civil society organisations had been pushing for, the draft law faced an intense backlash. In the negotiations with the European Council that followed, several countries sought to weaken the draft legislation and reduce its scope, driven by fear-mongering claims from business groups about the alleged burden it would place on small businesses.

This led to the introduction of exemptions and dilution of obligations that risked making the law ineffective. To counter the lobbying, civil society launched a public pressure campaign and worked to debunk disinformation on the directive. Cutting through the myths proved to be a big challenge, as Obregon explains: "Policymakers repeated ridiculous and sensationalist claims. It was very irresponsible of them to use arguments that were simply not true, or which took things out of context to sabotage the debate."

In February 2024, the Council failed to find a majority on the text for a second time. MEL Lara Wolters (rapporteur on the European Parliament's resolution) hit out at member states for their conduct, describing it as an "outrage" and claiming it showed a "flagrant disregard for the European Parliament as a legislator."

Civil society organisations also issued statements deploring the blockage, which showed how corporate lobbying could undermine and derail policy processes until the final moment.

For German Green MEP Anna Cavazzini, the CSDDD illustrated how "certain political parties are more prone to listen to certain lobbies, meaning that it is of course not only the lobbying, but also the political composition of the European Parliament and Council that influences the final result." The results of the latest European elections in May, and recent national elections, suggest campaigners may face an increasingly difficult political climate in which to push for more ambitious social and environmental justice legislation in the years ahead.

THE FIGHT CONTINUES

EU countries now have two years to transpose the directive into their national legislation, and companies covered will have to comply from July 2027. Broadly, the directive sets minimum standards from which EU countries may only deviate if they wish to set them higher. This means civil society groups will have to keep up the pressure to persuade countries to adopt strong national legislation.

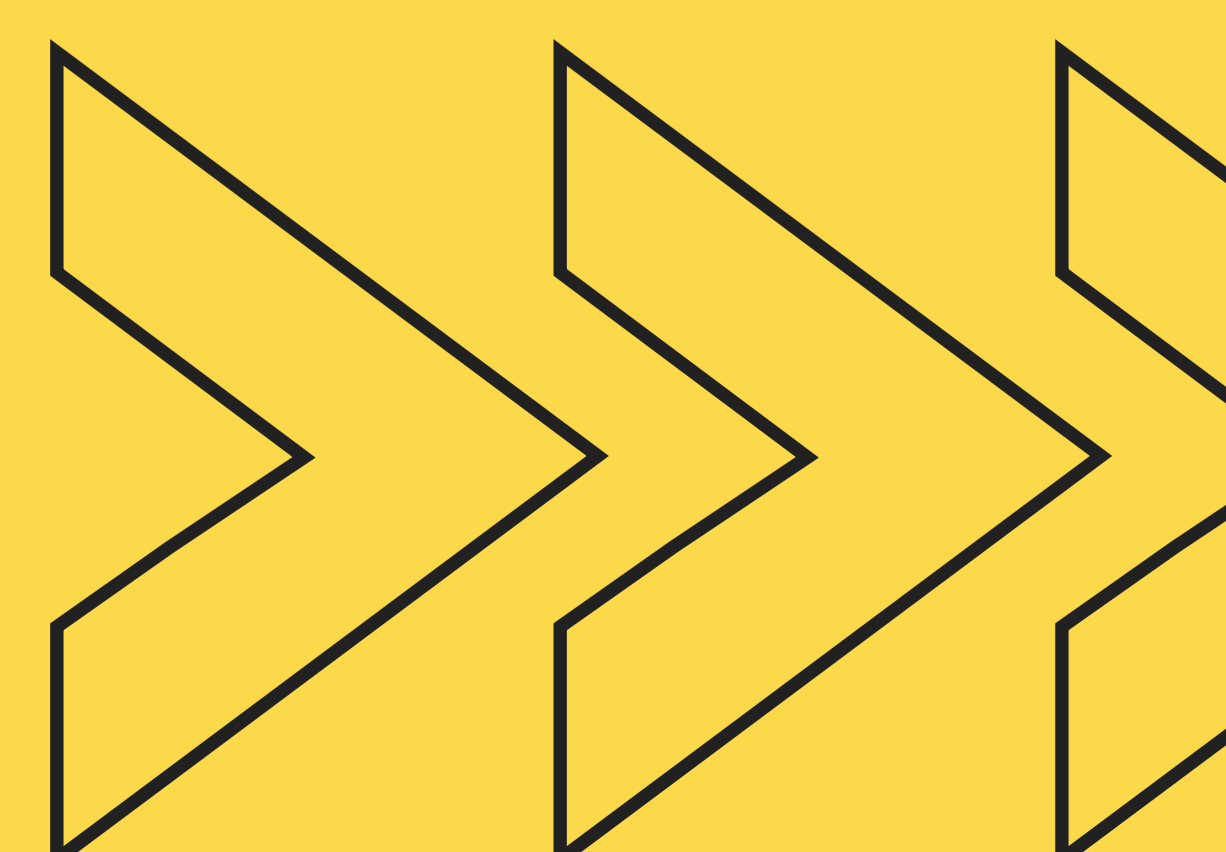
“We are also supporting communities and workers around the world to use the directive and play a role in monitoring and enforcement,” says Obregon. She explains that efforts will be divided, with some focusing on the technical aspect of the guidelines to be drawn up by the Commission, others on transposition, and others on working with partners in the Global South. All this with the overall “purpose of making sure the directive doesn’t become a paper tiger.” Organisations like ECCJ and FoEE will also continue to campaign to improve EU rules on improving access to justice for victims and additional measures to make the climate transition plans legally enforceable.

The directive’s adoption also means civil society organisations can broaden their efforts in the fight for corporate accountability. Other processes, such as the UN Binding Treaty on Transnational Corporations and Human Rights are a key focus for activists around the world. Thus far, the EU has been reluctant to engage productively with these discussions, and some campaigners hope the CSDDD will provide a mandate for a stronger position.

The campaign for European due diligence legislation could not have achieved what it has without the determination of those behind it, whose steadfast commitment to uncovering injustice and exposing the truth meant that the reality of corporate behaviour could no longer be ignored. Also crucial was the building of strong alliances and unflinching solidarity between activists around the world.

For campaigner Nicholas Omonuk, it is an important source of hope and demonstrates what can be achieved through collective campaigning, when different movements join forces, internationally and locally. Thanks to sustained campaigning, the Austrian company which had initially planned to manufacture the EACOP pipeline, from the withdrew project. “There is more work to do, but if this can be achieved at the EU level, we can go further,” he says. He is hopeful this momentum will have a broader impact in raising awareness and discouraging fossil fuel investment.

Above all, he believes, it shows, “communities can fight back and say no.”



Acknowledgements

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