



## NANHRI SECRETARIAT SUBMISSION ON THE EUROPEAN'S COMMISSION OMNIBUS

### PROPOSAL.

March 31, 2025

The Network of African National Human Rights Institutions (NANHRI) is a regional body of 47 National Human Rights Institutions (NHRIs) including national human rights institutions and ombudsmen from across Africa. Its mandate is to support establishment and strengthening NHRIs in Africa as well as to facilitate coordination and cooperation between and among themselves and between them and other key human rights actors at the regional and international levels. NANHRI has been providing advisory and capacity building, convening regional platforms for peer-learning and knowledge exchange; as well as coordinating engagements with regional human rights bodies on business and human rights.

Building on previous engagement by NANHRI and its members on access to remedy in business and human rights (BHR), NANHRI and its partners hosted an interactive NHRI Workshop at the margins of the 3rd Africa Business and Human Rights Forum learning workshop on the Corporate Sustainability Due Diligence Directive (CSDDD). The workshop focused on how NHRIs could utilize the Directive to promote access to remedy for business-related human rights abuses and drive business accountability. At the national level, NANHRI members actively engage with their national governments particularly in identifying synergies with relevant global processes in shaping responsible business practice in Africa.

With the EU being Africa's top trading partner, NANHRI expresses concern with the impacts of the Omnibus proposal (the Omnibus) to amend key instruments of the EU Green Deal, particularly the CSDDD adopted by the European Commission (the Commission) on 26 February 2025; in Africa where a huge volume of the cases involving corporate violation of human rights globally occur.

- a. **Change in approach to due diligence could reduce the ability of the instrument to improve conditions for rightsholders along the value chain and offer a pathway to remedy:** The Omnibus proposal limits due diligence to Tier 1 suppliers, unless a company has "plausible information" requiring it to do due diligence further into the supply chain. This is a departure from the risk-based

approach to due diligence in the UNGPs, and may mean that abuses further in the supply chain are not identified and addressed. As the Commission acknowledges, there are a range of risks in limiting the due diligence exercise to Tier 1. These include reducing the effectiveness of due diligence, given that the main risks to human rights and the environment most often occur farther upstream (and downstream) in the value chain. This limits the ability of the CSDDD to improve the conditions for rightsholders in third countries, such as those on the African continent who are negatively impacted by the activities of businesses who are part of the value chains of in-scope companies and correspondingly reduces the ability of those rightsholders to access the remedy mechanisms in the instrument. Thus, the most severe impacts that often take place further up in the supply chain in less organised and informal contexts (especially in Africa where raw material extraction happens) will not be scrutinised. The lack of accountability among these smaller entities undermines efforts to develop more sustainable and responsible supply chain chains, reducing the overall effectiveness of the directive.

- b. Change in civil liability regime will make it more challenging for affected rightsholders in global value chains to access justice through EU courts:** as the recitals to the Omnibus proposal make clear, as a matter of both international and Union law, EU Member States should be required to ensure that victims of adverse human rights impacts have effective access to justice. However, the Omnibus proposal removes the requirement on Member States to provide a harmonized regime for civil liability for harms resulting from intentional or negligent due diligence failures. It also removes the provision making the liability mechanism of overriding mandatory application, making it harder for claimants in third countries to access justice through EU courts. Furthermore, member states are no longer required to ensure that NGOs, trade unions, or Human Rights institutions can represent victims of corporate abuse in court. This renders it more difficult for victims to navigate the power imbalance between them and the corporation, and the foreign legal and judicial systems, often from a long distance. As the Commission acknowledges, this can lead to court cases becoming more fragmented rather than enabling a streamlined process, which would provide benefits for all parties to litigation.
  
- c. Change in definition of stakeholder engagement removes key stakeholders and reduced obligation to include stakeholder engagement through the due diligence process:** the definition of “stakeholder” has been changed with the intention of limiting engagement to stakeholders who could be directly affected. Civil society organisations and NHRIs are no longer included in the definition of stakeholder. Limiting the definition of stakeholders in this way impedes the ability of a company to properly map its risks, and understand broader contextual factors which are critical to designing effective appropriate measures. The Omnibus

proposal restricts the points at which companies are required to consult with stakeholders, removing the need for consultation when considering disengagement or monitoring due diligence—critical points in the due diligence process that should benefit from stakeholder input to avoid checkbox approaches to compliance. Combined with curtailing the due diligence value chain scope to Tier 1 (direct suppliers only) and narrowing the definition of stakeholders to those "directly impacted," this will result in very limited engagement with stakeholders, making the due diligence process less effective.

- d. **Change in responsible disengagement regime could create conditions which legitimates companies remaining engaged while human rights abuses continue:** the obligation under the responsible disengagement regime has been changed from an obligation to terminate a relationship where there are no prospects for human rights impacts to be addressed, to a requirement only that a company suspend. This risks permitting companies to continue benefiting from high-risk supply chains through continued engagements with business partners who are committing abuses.
  
- e. **The proposal to limit evaluations to every 5 years prevents timely identification and mitigation of risks:** as a result, it hinders the opportunity for continuous learning and improvement of due diligence processes. This limits the adoption of best practices at crucial intervals and fails to address the adverse impacts on African rightsholders effectively. Ultimately, this approach undermines the spirit of the CSDDD framework, weakening the overall effectiveness of the due diligence process.

To ensure that the CSDDD remains aligned with the UNGPs and OECD Guidelines to the greatest extent, the NANHRI Secretariat recommends that the EU:

- a. Ensures that the next phase of the legislative process is undertaken transparently and on the basis of adequate stakeholder consultation and a solid evidence base, particularly the representation of African NHRIs in any future consultations on the Omnibus proposal.
- b. Upholds the risk-based approach to due diligence throughout companies' chains of activities which is the cornerstone of international business and human rights standards.
- c. Maintain a broad definition of stakeholders, which includes NHRIs, and ensure that stakeholder engagement is central throughout the due diligence process.
- d. Maintain the original civil liability provision to ensure coherence on the conditions of civil liability across the EU and effective access to remedy for rightsholders.

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