



We Call on States To:

- 1** **NEGOTIATE** meaningfully and effectively for a legally binding instrument based on the [3rd revised draft](#) considering textual suggestions presented by States last year and actively promoting [demands](#) for stronger provisions to hold corporations accountable as articulated by people and communities affected by violations and abuses related to business activities. States must act urgently to advance and ultimately adopt the legally binding instrument in an effort to stop corporate capture, end corporate impunity and to create effective mechanisms to remedy and compensate communities and people particularly affected by transnational corporations in the extractive, financial, food, healthcare and tech industries- attentive to the different and disproportionate impacts experienced by women in all their diversity, gender non-binary persons, rural communities, Indigenous Peoples, and other historically marginalized groups, as well as communities in contexts of conflict and occupation.
- 2** **PRIORITIZE** the advancement and primacy of human rights and environmental rights in textual negotiations, including the specific rights of Indigenous Peoples, as vital for the future of our existence on earth. In particular, it is essential to call for the articulation of a provision on the right to self-determination in the text of the treaty. Additionally, key provisions on legal liability for violations and abuses related to business and extraterritorial obligations must remain at the heart of the treaty text. It is important to note that States carry their human rights obligations into intergovernmental organizations-including the UN, G20, IMF, etc.- and already have extraterritorial obligations to regulate their corporate and financial actors.
- 3** **STOP** corporate capture of this process! Corporations should not be influencing governments in decision-making processes where they have a clear conflict of interest. To this end, States must stop corporations from exerting direct or indirect influence on this and any other decision-making process that may affect our human rights and environmental rights.
- 4** **DISMANTLE** multistakeholder initiatives in decision-making at the UN and other multilateral spaces as a long term strategy that will best safeguard our rights. UN and other multilateral spaces must center the rights of the peoples and especially those at-risk by eliminating any conflicts of interest in processes where corporate agendas may influence effort to stop corporate impunity. These spaces should only be a source of information for corporations and not a space for influencing policy-making and legislation.





THE NEED FOR A TREATY TO REGULATE CORPORATE POWER



Why Do We Need a Legally Binding Instrument to Stop Corporate Impunity?



Voluntary Measures Are Not Enough to Ensure Corporate Accountability!

Several social movements and civil society organizations have invested and/or continue to invest time engaging on the UN Guiding Principles on Business and Human Rights (UNGPs) by participating in consultations and promotional platforms - whether regional or international -and more remotely through written interventions, such as a recent [submission](#) by ESCR-Net on corporate capture to the UN Working Group on Business and Human Rights (UNWG on BHR).

After several years of engagement with the UNWG on BHR and in the UNGPs implementation process with its voluntary national action plans (NAPs), many have come to the same conclusion that the NAPs are not enough as a standalone tool for corporate accountability - particularly due to their voluntary nature. For example, Manushya Foundation in Thailand recently issued a strong [position](#) on the NAP of Thailand highlighting that it is an “ineffective tool - it is a work plan for meetings - including only weak voluntary actions that barely promote responsible business and don't hold companies accountable.” Further, Manushya Foundation articulated clearly the need for legally binding instruments to regulate corporate power.

To complement the UNGPs process, it is evident that we urgently need to focus efforts and resources on the implementation of Human Rights Council [resolution 26/9](#) which decided in 2014 “to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”

As a critical complement to the UNGP process, we see it key that States mobilize their resources and efforts to champion the process to elaborate a legally binding instrument and as a concrete first step meaningfully and effectively engages in the Geneva intergovernmental negotiations from 24 - 28 October 2022, prepared to take leadership and to suggest text that would strengthen the [current draft](#) and put forward the [demands](#) of people and communities affected by corporate power.



WHICH STATES CAN CHAMPION THE TREATY PROCESS?



STATES WHERE COMMUNITIES ARE MOST IMPACTED BY CORPORATE IMPUNITY MUST BE CENTRAL TO THE PROCESS.

The treaty process has been ongoing for eight years with a [significant push](#) for its adoption from social movements and civil society organizations. In contrast, not enough States - particularly in the Global South - have dedicated proper resources to advance this process. On the other hand, corporate representatives have sought to undermine this process by lobbying States - particularly in the Global North - and presenting faulty and biased arguments for why this binding instrument should not advance to implementation. With so much at stake with continued corporate impunity, countries - especially in the Global South - must take leadership in the process to elaborate a legally binding instrument to champion the demands of Indigenous Peoples, feminist organizations, marginalized communities, human rights defenders and other at-risk groups that must remain at the center of this process.

The treaty process is currently at a critical juncture with transnational corporations and their home States in the Global North threatening to undermine its essence and push back on demands for legal liability and extraterritorial obligations. This would undercut corporate accountability efforts and related social justice struggles globally. While Ecuador continues officially holding the chairpersonship of the treaty process, other countries in the Global South must also consider themselves guardians of this process. This is especially true when a [majority](#) of human rights abuses and violations related to business activities occur in the Global South at the hands of transnational corporations headquartered in the Global North.

It is time for the Ecuadorian government to make room for others in the Global South that could carry the torch and champion this treaty process together with Ecuador. The composition of a group of friends of the chair is significant but the lack of transparency in terms of designation and process puts the whole group at stake. Additionally, it is of concern that there were no informal consultations this year with social movements and civil society organizations. Similarly, we are concerned that there were no clear criteria or approach adopted to ensure that key State allies of the treaty process are part of this group. In reality, the current situation suggests that Ecuador has sidelined CSOs and several key States that could help move this process forward in a way that centers peoples' demands over agendas of corporate power, profit and greed.

To move things forward, Ecuador must ensure a key African State is approached appropriately to become part of the friends of the chair group and that slowly this group may begin taking more leadership in helping to organize informal consultations with civil society organizations and in chairing or co-chairing the treaty negotiations each year.



WHY ARE WE ADVOCATING TO STOP CORPORATE CAPTURE?

A.

CORPORATE POLITICAL ENGAGEMENT

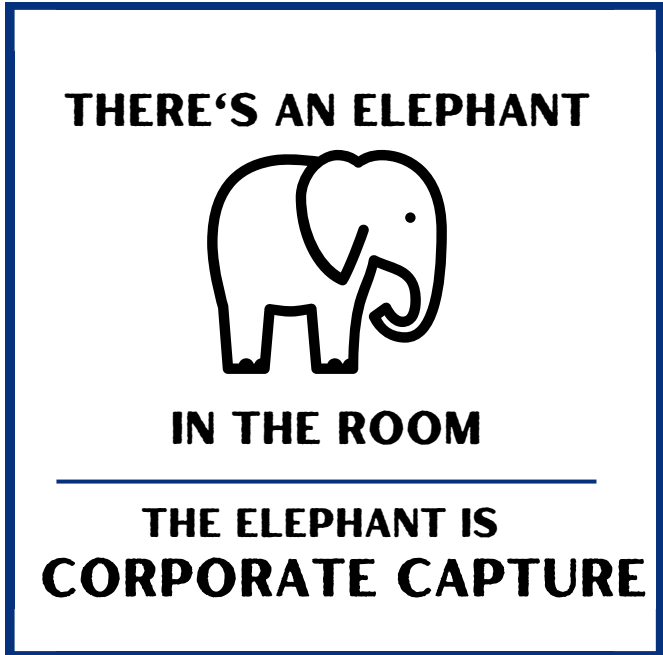


MULTISTAKEHOLDERISM



CORPORATE CAPTURE

There is an elephant in the room - it's corporate capture of the United Nations! We must stop it. We can see its impact on the treaty process in attempts by corporate representatives to weaken provisions on legal liability and extraterritorial obligations. Most recently, we have become concerned that the UNWG on BHR is beginning to refer to "corporate capture" as "corporate political engagement". We predict that this will be a way of masking or white-washing the dangers of corporate influence in the political sphere and in government decision-making nationally, regionally and internationally. We have seen multistakeholderism become a means of allowing increased influence by corporate actors on decision-making; the UN climate space is but another [example](#). In the same vein, phrases like "corporate political engagement" disregard and inherently accept or approve the immense power imbalances between profit-driven TNCs--some with more capital than entire States--and human rights defenders from Indigenous and other communities resisting corporate-driven dispossession and exploitation. We must focus our energy on stopping corporate capture and removing corporate actors from decision making space. Instead, we request that the participation of corporations in the UN and decision making governance spaces in general be limited to one where they are not influencing decisions or arguing their case for human rights but only receiving guidance and information based on the demands of affected communities. States - who have human rights and environmental obligations - must prioritize the primacy of human rights in decision making and stop corporate capture, as highlighted in our [comic episode](#) on corporate capture of the United Nations and in our [submission](#) on corporate capture to the United Nations Working Group on Business and Human Rights.





WHAT HAVE WE DONE REGIONALLY AND NATIONALLY TO PROMOTE THE TREATY PROCESS?



ESCR-NET HAS URGED GLOBAL SOUTH STATES TO ENGAGE MEANINGFULLY AND EFFECTIVELY!

LATIN AMERICA

Colombia: Several ESCR-Net members and allies, including Comité Ambiental en Defensa de la Vida, Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR), Consejo de Pueblos Wuxhtaj, FIAN-Colombia and FIAN-International, Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO), Indigenous Peoples Rights International (IPRI), and the Project on Organization, Development, Education and Research (PODER) gathered in Bogota in July 2022 on the margins of the UN regional forum on business and human rights to remind Latin American States that voluntary measures through NAPs are not enough to regulate corporate power. While we acknowledge - with due thanks to our movements and human rights defenders - that mandatory measures are increasingly becoming part of government plans to tackle breaches of human rights caused by business activities, this is not sufficient. Our message in Colombia was clear, we need a strong legally binding instrument that sets standards and expectations for holding corporations accountable across the globe. Guarantees of legal liability and extraterritorial obligations remain key to ensuring an end to corporate impunity and the legally binding instrument is a key process to set such standards.

Chile: ESCR-Net members, including the Movimiento dos Atingidos por Barragens (MAB) and the Project on Organization, Development, Education and Research (PODER), traveled to Santiago to meet with the Chilean government in July 2022 to request that Chile prioritize the treaty negotiations as part of their government agenda. Several key Chilean organizations have sent a letter to the Chilean government with this very request as a follow up to the mission. Our hope in Chile and its newly elected government is that it would stand against corporate capture of the treaty process and that it would lead in advancing the elaboration of this legally binding instrument with strong provisions that may hold corporations accountable. Though the Chilean government initially abstained on resolution 26/9 to elaborate a legally binding instrument that would regulate corporations, we believe that Chile - with its new government - is at an opportune moment to take leadership on ensuring the treaty process continues, centering the interest and demands of affected people and communities in Latin America and elsewhere in the world. We believe strongly that it also falls in line with the important commitments that this new government has made to its constituency.



Mexico: ESCR-Net in collaboration with the Project on Organization, Development, Education and Research (PODER) along with other members and allies of the Network held an advocacy meeting with the Mexican government in October 2022 with several main objectives: 1) To push for active and effective participation of Mexico during the eighth session of the treaty session on TNCs and OBEs. 2) To provide arguments on why Mexico can be a leader in the Latin America and the Caribbean region working towards an effective LBI. 3) To motivate the Mexican State to join forces with Colombia and Chile in order to have stronger regional participation. 4) To demand civil society participation in developing the official position during the LBI negotiations this October. 5) To have more transparency in the process. 6) To encourage the Mexican State in keeping its strong position on the text articles that benefit communities affected or potentially affected by corporate activities, given its large international investment agreements and the negative impacts of transnational corporations on human rights without human rights and environmental due diligence processes. 7) To encourage applying Mexico's feminist foreign policy in the LBI process to protect women's rights and for the LBI to include gender and intersectional perspectives in a cross-cutting manner.

ASIA

Thailand: In collaboration with the Asia Task Force on the Legally Binding Instrument (ATF), ESCR-Net members, including ALTSEAN-Burma, Citizen News Service, Asia Indigenous Peoples Pact (AIPP), Indigenous Peoples Rights International (IPRI), and Manushya Foundation held an advocacy mission in Bangkok, Thailand this September on the margins of the Asia Pacific Responsible Business and Human Rights forum. The purpose of this mission was to promote the elaboration of a treaty to regulate the activities of transnational corporations and other business enterprises in line with UN Human Rights Council resolution 26/9. In this mission, members organized and held a workshop for CSOs raising awareness on the legally binding instrument - members also met with several key Asian States calling on them to participate effectively and meaningfully in the treaty process and in the negotiations of the current draft text of the treaty - in a way that corresponds with the demands of communities affected by corporate activities.

In 2014, six Asian States voted in support of Resolution 26/9 paving the way for the process towards stronger binding international regulations on TNCs and other business enterprises. For more than a decade, ATF and ESCR-Net members have been taking collective action to advance the development of a clear and comprehensive international human rights framework on corporate accountability, including an international binding treaty on human rights and business.



Ghana: In an effort to move the treaty process forward meaningfully, several organizations - members and allies of ESCR-Net in the African region, including AfreWatch - African Resources Watch, African Coalition on Corporate Accountability (ACCA), African Indigenous Foundation for Energy and Sustainable Development (AIFES), Centre for Applied Legal Studies (CALS), Center for Human Rights, University of Pretoria, Initiative for Social and Economic Rights - ISER, Movement for the Survival of the Ogoni People (MOSOP), Narasha Community Development Group (NCDG), Natural Resources Women Platform (NRWP), Southern & Eastern Africa Trade Information & Negotiations Institute (SEATINI), Uganda Consortium on Corporate Accountability-UCCA and the Zimbabwe Environmental Law Association (ZELA), held an online strategic session earlier this month to unify urgent action on the treaty. Part of this action included strategic thinking on how to build on the work of many African CSOs and ensure that governments in Africa are participating more effectively in the treaty process. The opportunity to organize around this issue has emerged on the margins of the African Business and Human Rights Forum, where several key civil society organizations will be presenting in informal and formal sessions arguments as to why voluntary measures such as National Action Plans to implement the UNGPs have thus far failed to achieve corporate accountability and why we urgently need a treaty to regulate corporate power.

In reality, several key social movements and civil society organizations in the African region have been actively advocating for the urgent need of the UN legally binding treaty for many years. In a regional African consultation held by civil society organizations on the draft legally binding treaty on business and human rights last year, key members of African civil society issued a collective statement strongly supporting the continuation of the existing process and refinement of the existing draft. In addition, CSOs rejected the need for starting any new process or the need to fundamentally change the text. The statement further articulated that the text of the binding treaty is:

“...effectively taking forward the UNGPs, in both the areas of prevention and access to remedy. It involves rendering human rights due diligence mandatory and addressing obstacles to access to remedy. We thus reject any attempt to weaken these elements and ask State Parties to continue with this existing process and reach finalization of the text. In doing so, they will be doing the work of the UNGPs.”

Around the world, civil society, social movements, affected communities as well as human and environmental rights defenders are confronting widespread and systematic human rights abuses and violations related to business activities. This trend is intensified by corporate capture of government decision-making, barriers to effective regulation in both the home and host States of corporations - particularly transnational corporations, and a failure to ensure effective access to remedy and accountability. Countries in the Global South face particular challenges in securing remedy for harms to their communities and environment by large transnational corporations headquartered in the Global North. Global South governments are consequently stuck with the costs and other long term consequences of such damages.

In 2014, 10 African States voted in support of Resolution 26/9 paving the way for the process towards stronger binding international regulations on TNCs and other business enterprises. This was the strongest support shown regionally for this process. This is quite significant given the weakening participation of African States over the years.





WHAT IS THE ROLE OF GLOBAL NORTH IN THE TREATY PROCESS?



IT'S TIME TO ADDRESS COLONIAL LEGACIES AND TO PRIORITIZE HUMAN RIGHTS OVER CORPORATE PROFIT.

Countries in the Global North are heavily influenced by corporate lobbying. In this typical case of corporate capture, we have seen countries like the United States and the United Kingdom echo the words of corporate representatives at previous treaty sessions in calling for weaker provisions on legal liability and extraterritorial obligations. This means that their agendas are primarily influenced by that of corporate representatives who are engaged in the treaty negotiations to sway this instrument from one that could achieve meaningful accountability, to one that would add to already further voluntary guidelines for corporate entities and States to consider.

Social movements and civil society have said this once and again. Voluntary measures are not sufficient. States must have an honest conversation and recognise that current voluntary frameworks and measures on human rights and business, that have played an important role in positioning human rights in the business agenda, are insufficient to enhance remedy and reparation and to close the accountability gap of business activities, particularly those of a transnational character. In this context, the adoption of an international treaty on human rights and business would be a landmark achievement to support impoverished, marginalized, exploited and other at-risk communities in claiming justice and reparation from corporate elites. States' support of an LBI to regulate corporate power would not only meet the historic demands of global social movements and affected communities, but also crown the efforts/fight for justice and reparation of many generations that have faced colonialism and dispossession of over decades - this instrument would mark a crucial step towards the unpostponable task of advancing human dignity and climate justice.

While we acknowledge that new national regulation focusing on human rights due diligence is advancing in Europe, we are also conscious of its limitations and challenges, and we strongly believe that an LBI is needed to set the standard for corporate accountability across the globe. An LBI will not only set global standards for the practicing of corporate due diligence but it will also set parameters to enable holding State and non-State actors accountable for human rights abuses and violations related to business activities through strong standards of criminal, civil and administrative liability for corporations. In the face of the urgent need for a global legal framework to protect people and planet from corporate greed and State connivance, it is worrying that an important group of States among the most industrialized Western States are still delaying action, maneuvering to avoid negotiations or even plotting to derail the process by launching alternative initiatives and models of treaty, such as a basic framework convention, that would only delay or weaken progress made and tie us to failed models and frameworks.



DID YOU GET OUR MESSAGE?

Around the world, social movements, rural communities, Indigenous Peoples, marginalized groups, civil society organizations, as well as human and environmental rights defenders are confronting widespread and systematic human rights abuses and violations related to business activities. This trend is intensified by corporate capture of government decision-making, barriers to effective regulation in both the home and host States of corporations - particularly transnational corporations, and a failure to ensure effective access to remedy and accountability. Countries in the Global South face particular challenges in securing remedy for harms to their communities and environment by large transnational corporations headquartered in the Global North. Global South governments are consequently stuck with the costs and other long term consequences of such damages.

We believe that there is an urgent need for all States to support the 3rd revised draft of the legally binding instrument as a valuable starting point for negotiations and to push back against corporate capture of the process. Existing elements of legal liability in all contexts, extraterritoriality and a provision on conflicts of interest are essential to stopping corporate impunity.

After eight years of this process, we ask the question - if we do not work to advance a meaningful legally binding instrument now, then when? Now is the time to act. Human rights, our planet and the environment cannot wait any longer and we cannot allow corporate capture of our government decision-making processes to continue delaying the realization of our demands.

It is our view that in order to move the process forward towards a robust International legally binding instrument, that the concerns expressed by civil society, social movement and affected communities be addressed, and the negotiating text be further strengthened to reflect the utmost protection of human rights, consistent with the mandate and the spirit of UN resolution 26/9. It is troubling that some States in the Global North - or those influenced by the Global North - have called for fundamental changes to the text that would present a toothless foundation for the legally binding instrument. Hundreds of civil society and social movements have shared much of their lived experiences, legal expertise and input, which has in part been integrated into the current text of the draft legally binding instrument. We call on States to respect and fully promote our demands for a stronger treaty!

RESOURCES TO ADVOCATE FOR A BINDING TREATY TO #STOPCORPORATEIMPUNITY

- [One pager](#) on the treaty!
- [Textual suggestions](#) for a stronger legally binding treaty (2021)
- [Advocacy paper](#) (2020) for strengthened text of the draft legally binding instrument
- [Advocacy paper](#) (2021) for strengthened text of the draft legally binding instrument
- [Collective statement](#) (2021) on urgent need for a legally binding instrument at the international/UN level
- [African regional statement](#) (July 2022)
- [Comments on 3rd draft text from South African CSOs](#)
- [Call to International Action](#) (Global Campaign to Dismantle Corporate Power)
- [Proposal for a Treaty](#) on Transnational Corporations and Their Supply Chains with Regard to Human Rights (Global Campaign to Dismantle Corporate Power)
- [Foundational statement](#) (2013) supporting a legally binding instrument (with 1000 signatories)
- [Comic episode](#) (2021) on corporate capture of the UN
- [Background document](#) (2021) for comic episode on corporate capture of the UN
- [Submission](#) to the UNWG on BHR on corporate capture of the UN (2022)

BINDING TREATY **NOW**

To know more about the treaty process and how
the draft text can be strengthened:



<https://bit.ly/bindingtreatynow>



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