

Our 2 Objectives for Advocacy in Addis Ababa, Ethiopia

1 TO RAISE:

VOLUNTARY MEASURES ARE NOT ENOUGH TO ENSURE CORPORATE ACCOUNTABILITY



2 TO WARN:

CORPORATE POLITICAL ENGAGEMENT



MULTISTAKEHOLDERISM



CORPORATE CAPTURE



1

VOLUNTARY MEASURES ARE NOT ENOUGH TO ENSURE CORPORATE ACCOUNTABILITY

Many social movements and civil society organizations have invested and/or continue to invest time in the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) by participating in consultations and promotional platforms - whether regionally at the African Business and Human Rights Forum or internationally - and more remotely through written interventions, such as our [submission](#) on corporate capture to the UN Working Group on Business and Human Rights (UNWG on BHR).

Several states in Africa (Kenya, Uganda and Nigeria) have developed National Action Plans (NAPs) as a means to implement the UNGPs - while several other African states are taking steps or committing to develop NAPs. Indeed, the NAPs could be useful as guidance for corporations and states in promoting responsible business conduct, however, after several years of engagement in the UNGP processes and the voluntary NAPs, many of our members have concluded that, due to their voluntary nature, the NAPs are not enough as a standalone tool to end corporate abuse and violations by effectively holding corporations accountable for acts or omissions in their operations.

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.”

This process has been ongoing for around ten years, with a [significant push](#) for its adoption from social movements and civil society organizations. States in the Global South have been at the forefront of advancing this process. Unfortunately, not enough States have prioritized their resources to urgently 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 in Africa - and the Global South more generally - must continue to take leadership in the process to elaborate a legally binding instrument. Especially since corporate impunity most starkly affects people in the Global South. Last year, we saw several Global North countries join the LBI negotiations process. While it is important for this process to have a cross-regional participation of States, the outcome must reflect the needs of people most affected by corporate abuse and violations. In this way, the 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. To this end, countries in the African region and the wider Global South must remain steadfast in pushing for a strong and actionable LBI that would promote accountability and an end to corporate impunity.

As a critical complement to the UNGP process, we see it key that African States mobilize their resources and efforts to champion the process to elaborate a legally binding instrument and as a concrete first step join to the Geneva intergovernmental negotiations from 23 - 27 October 2023, prepared with suggested text that would strengthen the [current draft](#) and put forward the [demands](#) of people and communities affected by corporate power.



Most recently, we became concerned that the UNWG on BHR is beginning to refer to “corporate capture” as “corporate political engagement.” We predict 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 one example. In the same vein, phrases like “corporate political engagement” risk sanctioning 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 spaces. 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.

A Regional Perspective:

In Africa, the African Continental Free Trade Agreement (AfCFTA) will require African states to open their economies thus giving corporations unfettered access to Africa which could lead to widespread human rights abuses by the corporations and a further increase in corporate power. States will be forced to compete for foreign investment through deregulation and corporations will continue to use this situation to their advantage and seek to profit from human rights abuses. 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.

A treaty on transnational corporations and human rights could be used as a tool to place limits on the power of TNCs and hold them accountable when they commit human rights violations. We believe that there is an urgent need for States to support the current text 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, extraterritoriality, and a provision on conflicts of interest are clearly seen as a threat to corporate impunity, power and profits, leading to resistance from governments that have apparently prioritized corporate interests over the realization of human rights. Several African Organizations developed [a joint submission to the IGWG](#) noting with great concern the growing influence of powerful corporations and their representatives in the negotiation process of the Treaty noting the same is aimed at preventing or delaying the adoption of the Treaty and / or weakening its content. The submission further pointed out:

“ We condemn this influence, and demand that adequate measures are taken to prevent corporate pressure and or corporate capture of the process taking into account that this is a negotiation within the United Nations Human Rights Council. It is encumbered on the Council to ensure that the negotiation and associated processors are fair and place Human Rights above any other interests.”

It is our view that in order to move the process forward toward a robust International Legally Binding Instrument, that the concerns expressed by civil society, social movements 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 call for the text to be replaced by another toothless foundation, particularly when 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:

1

Act urgently to adopt a legally binding instrument to stop corporate impunity, to prevent human rights abuses and violations related to business, and to create effective mechanisms to remedy and compensate communities and people affected by business - attentive to the different and disproportionate impacts experienced by women in all their diversity, gender non-binary persons, 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, including the specific rights of Indigenous Peoples, as vital for the future of our existence on earth. It is important to note that States carry their human rights obligations into intergovernmental organizations-including the UN, G20, IMF, etc.- and have extraterritorial obligations to regulate their corporate and financial actors.

3

Stop corporate capture of government decision-making processes where corporations are exerting direct or indirect influence on decision-making processes that affect our human rights and environmental rights.

4

Dismantle multi stakeholder initiatives in decision-making at the UN and other multilateral spaces - these spaces must center on the rights of at-risk communities and be protected from any conflicts of interest related to corporate profit-making and impunity. These spaces should only be a source of information for corporations and not a space for influence.

RESOURCES TO ADVOCATE FOR A BINDING TREATY TO #STOPCORPORATEIMPUNITY

- [Comic episode](#) (2021) on corporate capture of the UN
- [Background document](#) (2021) for comic episode on corporate capture of the UN
- [Collective statement](#) (2021) on urgent need for a legally binding instrument at the international/UN level
- [Comments on 3rd Revised Draft Treaty Business and Human Rights from South African Civil Society Organizations](#)
- [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)
- [Advocacy paper](#) (2021) for strengthened text of the draft legally binding instrument
- [Foundational statement](#) (2013) supporting a legally binding instrument (with 1000 signatories)
- [Submission](#) on Corporate Capture of the UN to the UNWG on BHR (2022)
- [ESCR-Net Submission](#) to the Chair-Rapporteur and IGWG on the Third Revised Draft (March 2023)
- [African Civil Society & Faith Based Organizations' Submission to IGWG on the Third Revised Draft](#) (March 2023)
- [Centre for Applied Legal Studies, Transnational Corporations & Human Rights in Africa](#) (2023)

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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