



International Network for Economic,
Social and Cultural Rights (ESCR-Net)
Corporate Accountability Working Group



INTERNATIONAL
COMMISSION
OF JURISTS

fidh
Fédération internationale
des ligues des droits de l'Homme

ESCR Net, ICJ & FIDH Oral Statement to UN Human Rights Council, XXth Session

The ESCR Net Corporate Accountability Working Group,¹ ICJ and FIDH welcome the opportunity to address the first report of the Working Group on Business and Human Rights. We would like to address issues concerning participation, remedies, development of standards and UN agency relationships with corporations.

First, on participation, we note the efforts made by the Working Group to engage with and respond to various stakeholders. However, participation by those actually affected by the activities of business corporations has thus far, been minimal. While taking note of the possibility for the Annual Forum in 2013 to take place in another location, future consultations by the Working Group should be held in locations where representatives of people affected by corporate human rights abuse can participate in a meaningful way. We believe a voluntary fund should be established to facilitate greater participation by those directly affected by the activities of corporations and calls on the OHCHR to consider such a fund.

On the issue of remedies, we support the focus by the Working Group on the need for greater access to effective remedies. We note that the GPs clearly consider enhanced accountability and identify the challenges of investigation and of prosecution including extraterritoriality. However, they lack sufficient attention to the role of judicial remedies both vis-a-vis businesses and States that fail to fulfill their protective obligations. Judicial remedies must always be available to victims of human rights violations, even if as a last resort- and complementary to other non-judicial mechanisms. We call on the Working Group to urge States to strengthen the availability of accessible, effective, impartial remedy mechanisms, including the availability of remedies in home states of transnational corporations. In this regard and generally speaking regarding States' duty to protect and regulate, we encourage the Working Group to consult and reference the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.

Third, on the potential for future standards, the assertion in the working group's report that the Guiding Principles "remain the authoritative basis of understanding of the respective responsibilities and duties of business enterprises and States" is a cause of some concern. The Guiding Principles are not a legally binding instrument and this limits their normative force. Further, the Human Rights Council stated in its resolution that the implementation of the Guiding Principles should not "foreclos(e) any other long-term development, including further enhancement of standards". Similarly, the former Special Representative emphasised that the GPs are a common global platform on which "cumulative progress can be built, step-by-step". We recommend that the WG's independent experts ensure that their activities and statements contribute to and not hinder the potential development of further international standards.

¹ The members of the Steering Committee of the ESCR Net CAWG are: Rights & Accountability in Development (RAID), Tebtebba Foundation, Western Shoshone Defense Project, Dbaatri Resource Centre for Women, International Commission of Jurists (ICJ), Movement for the Survival of Ogoni People (MOSOP), Earthrights International (ERI), Center for Human Rights & Environment (CEDHA) and Colectivo de Abogados José Abear Restrepo.

Finally, regarding the working group's stated approach to engagement with other stakeholders, we encourage the working group to actively seek opportunities for 'strategic collaboration with United Nations bodies'. In particular, we recommend the working group assist and advice UN agencies on how best to manage relationships with corporations while also upholding human rights standards.