

الشبكة العالمية
للحقوق الاقتصادية
والاجتماعية والثقافية



ESCR-Net
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**ESCR-Net - International Network for
Economic, Social and Cultural Rights**
E: pwattimena@escr-net.org

To: United Nations Special Rapporteur on the promotion and
protection of human rights in the context of climate change
Office of the High Commissioner for Human Rights
UNOG-OHCHR, CH-1211, Geneva, Switzerland

**Subject: ESCR-Net input on corporate accountability in the context of human rights and
climate change**

Dear Mr. Ian Fry,

This submission is made on behalf of a group of members¹ from the Working Groups on Corporate Accountability and Environment and ESCR of the International Network for Economic, Social and Cultural Rights (ESCR-Net).² Our Network is a collective of more than 300 members – social movements, Indigenous Peoples groups, NGOs and human rights defenders – including feminist and women’s rights movements across 80 countries working together to make human rights and social justice a reality for all. ESCR-Net has identified environmental degradation and climate change as one of five common conditions threatening communities globally, highlighting the lack of corporate accountability, the extractive nature of our dominant economic system and the commodification of nature driven by big polluters and corporate giants. Our submission addresses historic corporate impunity as a primary cause of environmental-destruction and climate change - threatening human survival and the enjoyment of all human rights for present and future generations.

**Question 3(c) What evidence do you have of greenwashing or green hushing with respect to
climate change mitigation claims and/or human rights obligations?**

A wealth of existing evidence points at the fact that fossil fuel companies have been aware of the harmful impacts of their businesses on the environment and people’s wellbeing. For example, in 1966 Exxon Mobil predicted that the burning of fossil fuels was increasing carbon dioxide in the

¹ Members who have contributed to or endorsed this submission are: African Indigenous Foundation for Energy and Sustainable Development (Nigeria), Asia Pacific Forum on Women, Law and Development (APWLD, Thailand), Center on Economic and Social Rights (US), Comité Ambiental para la Defensa de la Vida (Colombia), FIAN International (Germany), Global Initiative on Economic, Social and Cultural Rights (GI-ESCR, US/Global), Interamerican Association for Environmental Defense (AIDA, US), International Women’s Rights Action Watch Asia Pacific (Malaysia), Natural Resources Women Platform (Liberia), and Ogiek People Development Program (Kenya). ESCR-Net Secretariat has facilitated the intervention and coordinated the inputs received.

² <https://www.escr-net.org>

atmosphere, which, if not corrected, would lead to “vast changes in the climates of the earth,” including global warming, resulting in melting of the polar ice caps, and in turn, in the inundation of many coastal cities, including New York and London.³

Similarly, other companies and governments supporting fossil-fuel based economies have been well aware of the unsustainability of these businesses and the devastating impacts on the climate. However, as the public began highlighting harmful corporate activity,⁴ fossil fuel companies realized that in order to sustain their business model, they would have to re-brand⁵ and launched an insidious campaign to confuse the public about their primary role in creating the crisis. The first strategy was to deny climate change altogether. Fossil fuel companies launched endless “campaigns of deception” to capture the media and manipulate public opinion about climate change, with the ultimate goal of halting any effective action to curb climate change.⁶

The second strategy was corporate capture⁷ of domestic and international political spaces through legislative and policy interference - diverting public policy in response to climate change. The Global Climate Coalition was the first and largest organization opposing climate action in the late 1980s; its membership included fossil fuel giants such as Shell and Chevron.⁸ Disbanded in 2002, its aggressive lobbying practices remain entrenched in the strategies of fossil fuel corporations, resulting in global inaction in the face of a worsening climate crisis.

More recently, corporations realized that they can no longer hide behind the devastating effects of climate change, which are ravaging the planet, especially the Global South, with alarming frequency. Corporations then decided to reinvent themselves to be seen as champions of the climate change fight, and of human rights, presenting themselves as “climate friendly” and proposing profit-oriented and market-driven solutions while still maintaining the status quo. This concept has been termed “greenwashing,” referring to fossil fuel corporations seeming more environmentally friendly than they truly are.⁹

The term “greenwashing” presents the two faces of fossil fuel corporations in today’s climate conversation. On the external front, corporations are purportedly on-board with climate change and its effects. Internally, however, they continue: (1) fueling the “denial machine” and (2) promoting false solutions to climate change. A 2019 report found that “the 5 largest publicly-traded oil and gas majors (ExxonMobil, Royal Dutch Shell, Chevron, BP, and Total) have invested over \$1 billion of shareholder funds in the three years following the Paris Agreement on misleading

³ Élan Young, *Exxon knew— and so did coal*, GRIST, (29 Nov 2019), available at <https://grist.org/energy/exxon-knew-and-so-did-coal/>.

⁴ Kate Yoder, *It's not just Coca-Cola: Corporations have co-opted the UN climate talks*, GRIST, (15 Nov 2022), <https://grist.org/cop27/corporations-have-co-opted-the-un-climate-talks-coca-col/>.

⁵ Id

⁶ Phoebe Keane, *How the oil industry made us doubt climate change*, BBC News, (20 Sept 2020), <https://www.bbc.com/news/stories-53640382>.

⁷ <https://www.escri-net.org/corporateaccountability/corporatecapture/manifestations-corporate-capture>

⁸ Ibid 2

⁹ Global Witness, *What is Greenwashing?*, (16 Nov 2021), <https://www.youtube.com/watch?v=PgiL3vCQLbA&t=5s>

climate-related branding and lobbying.”¹⁰ On its own, ExxonMobil has given “\$690,000 to eight climate science denier groups in 2019”¹¹ -many years after ExxonMobil publicly accepted climate change is real.¹²

While the real solution to climate change is to cut emissions at source, corporate capture has led to the promotion of false solutions, in which corporations continue scaling up their fossil fuel operations while presenting outwardly as if they are contributing to tackling climate change. As opposed to real and meaningful solutions, greenwashing allows fossil fuel corporations to continue their climate killing operations while also receiving money for implementing their false solutions to the same problem they created and continue to exacerbate.

The promotion of false solutions is not limited to the fossil fuel industry. The world's largest food corporations agreed to eliminate deforestation from their supply chains by 2030. However, Zero-deforestation pledges have been used by big food corporations like Nestle and Cargill to offset their carbon emissions rather than cutting emissions from their own supply chain. For Nestle, it will require an untenable 4.4 million hectares of land annually, more than the size of its home country, Switzerland. The implementation will increase total demand for land and land-related conflict in places where the project is, such as in the island of Mindanao in the Philippines.¹³

Large food corporations, such as Archer-Daniels-Midland (ADM), Cargill, Danone and Nestlé, are pursuing regenerative agriculture programmes as part of their climate initiatives. All of these initiatives focus on encouraging farmers to tweak their agricultural practices in ways that are said to build back carbon in soils. Regenerative agriculture places the responsibility to reduce corporate emissions in the hands of the farmers who are under contracts within the companies’ supply chain. For example, PepsiCo’s regenerative agriculture projects in India and Thailand ensure that potato farmers produce only for the company’s Lay’s potato chips.¹⁴

Question 3(d) What role does the carbon market play in greenwashing?

One of the main practices within the carbon market is fortress conservation. This allows companies to pay for the creation and maintenance of a protected area that serves as a “carbon sink” or an absorber of large amounts of carbon dioxide in the atmosphere. Fortress conservation is based on “a model that suggests that fragile ecosystems need to exist separately from human interaction.”¹⁵ Because it believes that humans are a threat to wildlife, it often entails forcibly evicting people from their land - especially Indigenous Peoples - often along with barricading the area as protected,

¹⁰ The Climate Denial Machine: How the Fossil Fuel Industry Blocks Climate Action, THE CLIMATE REALITY PROJECT (5 Sept 2019), <https://www.climate-reality-project.org/blog/climate-denial-machine-how-fossil-fuel-industry-blocks-climate-action>.

¹¹ Elliot Negin, *ExxonMobil Claims Shift on Climate But Continues to Fund Climate Science Deniers*, Union of Concerned Scientists USA, (22 October 2020), <https://blog.ucsusa.org/elliott-negin/exxonmobil-claims-shift-on-climate-continues-to-fund-climate-deniers/>

¹² Exxon’s Climate Denial History: A Timeline, Greenpeace, available at <https://www.greenpeace.org/usa/fighting-climate-chaos/exxon-and-the-oil-industry-knew-about-climate-crisis/exxons-climate-denial-history-a-timeline/>

¹³ Kartini Samon, *Feminist Food Sovereignty: a Paradigm Shift in Confronting the Climate Crisis*, Asia Pacific Forum on Women, Law and Development, Thailand, 2023.

¹⁴ Ibid 10.

¹⁵ Olivia Sakai, *Decolonizing Conservation: A Rights-Based Alternative to Fortress Conservation*, University of California, Berkeley, available at <https://live-mdp.pantheon.berkeley.edu/decolonizing-conservation-a-rights-based-alternative-to-fortress-conservation/>.

and policing any movement or activity by those who lived there for generations and have a sacred relation to it.¹⁶

On 2 November 2023, the Kenyan government pressed on with evicting hundreds of indigenous Ogiek, accusing them of encroachment and illegal logging in their own ancestral Mau forest. Human rights lawyers said that the evictions are allegedly linked to the increased efforts to conserve forests for the carbon offset scheme.¹⁷ The evictions contravene the ruling and express order of the African Court of Human and People's Rights in 2017 stating that the Ogiek are entitled to their land, and which in 2022 obliged the Kenyan government to pay reparations, guarantee the right of the Ogiek to their ancestral lands and to free, prior, and informed consent regarding any projects on those lands. The Ogiek are resorting to petitions and litigation to stop the evictions and enforce their collective territorial rights.

While the human use of protected areas is restricted, ironically fortress conservation often promotes the use of the forests and lands for tourism (safaris, wildlife hunting).

Fortress conservation is colonial. The carbon offsetting business has heavily relied on the Global South to provide the land needed to develop this market. Of the 15% of global land surface already categorized as "protected areas", 66% of that is located in the Global South, primarily Africa, the Caribbean, and Latin America.¹⁸ The fortress conservation industry and 'nature-based solutions' (NBS) more broadly commodify nature to continue harming the environment with destructive industries. Indeed, "NBS threatens to distort nature protection— instrumentalising nature as a solution rather than as something worth protecting for its own sake and formalising a false notion that 'nature' and 'people' are separate."¹⁹

In October 2021, the government of Sabah, Malaysia, granted extendable monopoly rights of 100 years over two million hectares of forest lands to the Singapore firm, Hoch Standard Pte Ltd. without any FPIC of the Indigenous communities living in the area. With this agreement, Hoch Standard was given the exclusive right to develop 'nature conservation management plans' and to manage the 'natural capital benefits' over the forest lands. This was done under the auspices of REDD+, currently repackaged as NBS.²⁰

Carbon farming is another false solution. To start with, they produce offsets that corporations buy to avoid cuts to their own emissions. In addition, rather than guaranteeing a permanent removal of carbon from the atmosphere, these initiatives keep carbon in the soil up to a mere 10 years, while carbon needs to be stored for at least 100 years to meaningfully reduce the global temperature.

¹⁶ Simon Counsell, *Fortress conservation is heading for a crisis that can't come soon enough*, Climate Diplomacy, (2 August 2022), available at <https://climate-diplomacy.org/magazine/conflict/fortress-conservation-heading-crisis-cant-come-soon-enough>.

¹⁷ Claire Marshall, *Kenya's Ogiek people being evicted for carbon credits - lawyers* (9 November 2022). <https://www.bbc.com/news/world-africa-67352067>

¹⁸ Aby L. Sène, *Land grabs and conservation propaganda*, (17 June 2022), Africa Is a Country Magazine available at <https://africasacountry.com/2022/06/the-propaganda-of-biodiversity-conservation>.

¹⁹ Position Paper, *Nature Based Solutions: A Wolf in Sheep's Clothing*. Friends of the Earth International (October 2021), <https://www.foei.org/publication/nature-based-solutions-a-wolf-in-sheeps-clothing/>

²⁰ Ana Celestial, *False Solutions: Climate Colonialism and Tragedy of the Commons*, Asia Pacific Forum on Women, Law and Development, Thailand, 2023.

As noted by the former UN SR on Indigenous Peoples, Victoria Tauli-Corpuz, there is a “growing body of evidence” suggesting that “forests thrive when Indigenous Peoples remain on their customary lands and have legally recognised rights to manage and protect them.”²¹ Another statistic finds that, “80% of our planet’s remaining biodiversity is on indigenous land.”²² In contrast, carbon credits from fortress conservation schemes “are likely to be phantom credits and do not represent genuine carbon reductions.” In a study on Verra, the world’s leading carbon standard for the carbon credit market, it was revealed that 90% of the rainforest offset credits involved in the various conservation projects did not represent a single carbon reduction. Additionally, the study found that Verra overstated by 400% the threat to forests by those living on them.²³

Sacrifices, dispossession, and violence are always faced by the colonized and never by the colonizer, despite the fact that global North corporations and countries are primarily to blame for the climate crisis and despite the fact that the global South bears the brunt of the climate disruption. While Indigenous Peoples all over the world are being forcibly evicted after their homes are designated as protected areas, the fortress conservation market continues to expand into the millions of dollars and plans to set aside 30% of the Earth’s surface for more conservation projects.²⁴ Carbon offsetting schemes are an alluring proposal for corporations: companies can display their alleged commitment to climate solutions and protect themselves from public backlash and boycott. In real terms, this means that corporations continue their practices, business as usual, while Indigenous Peoples who have lived in their lands for countless generations are denied access to these ancestral lands. When Indigenous Peoples resist dispossession, many have their homes burned down and are threatened, murdered, or slowly starved.²⁵

Question 4 (a)(b)(c): UN Guiding Principles on Business and Human Rights

Many ESCR-Net members - 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 or Latin American Business and Human Rights Forum or internationally

²¹ David Hill, *Rights, not ‘fortress conservation’, key to saving planet, says UN expert*, THE GUARDIAN, (16 Jul 2018), available at <https://www.theguardian.com/environment/andes-to-the-amazon/2018/jul/16/rights-not-fortress-conservation-key-to-save-planet-says-un-expert>.

²² Kayinke Sena, *Recognizing Indigenous Peoples’ Land Interests is Critical for People and Nature*, World Wildlife Fund, (22 Oct 2020), available at <https://www.worldwildlife.org/stories/recognizing-indigenous-peoples-land-interests-is-critical-for-people-and-nature#:~:text=Although%20they%20comprise%20less%20than,they%20have%20lived%20for%20centuries>.

²³ Patrick Greenfield, *Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows*, THE GUARDIAN, (18 Jan 2023), available at <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe#:~:text=The%20research%20into%20Verra%2C%20the.companies%20E2%80%93%20are%20likely%20to%20be%20E2%80%9C>.

²⁴ Id.

²⁵ Id.

-and more remotely through written interventions, such as our submission²⁶ on corporate capture to the UN Working Group on Business and Human Rights (UNWG on BHR).

Several states in Africa, Asia and Latin America have developed National Action Plans (NAPs) as a means to implement the UNGPs. 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 NAPs, many of our members have concluded that, due to their voluntary nature, they are not enough as a standalone tools to end corporate abuse and violations by effectively holding corporations – particularly the extractive industry- accountable for acts or omissions in their operations. The lack of strong accountability mechanisms within the UNGPs to monitor human rights violations by companies relating to human rights due diligence procedures, in addition to the omission of references to extraterritorial obligations, give companies leeway to conduct business as usual. For instance, AngloGold Ashanti, a transnational mining company “committed to the UNGPs and other international initiatives, including the United Nations Global Compact and the Voluntary Principles on Security and Human Rights”, is carrying out a project that, according to five UN Special Rapporteurs, threatens the right to food, water and a healthy environment, and undermines the protection of ecosystems granted under Colombian law.²⁷ Similarly to many other countries, in Colombia there is ample evidence pointing at the almost total impunity around human and environmental rights abuses committed by corporations.²⁸

To further complement the UNGPs, 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. 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

²⁶ ESCR-Net submission to the UN Working Group on Business and Human Rights, https://www.escr-net.org/sites/default/files/escrnet_final_submission_unwg_bhr_corporate_capture_spa.pdf

²⁷ AL.COL 6/2023 about “La Colosa project”, in Cajamarca, (Tolima), Colombia. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28245>. In addition to violations of the abovementioned rights, the UNSRs pointed out that the project does not recognize the right of peasant communities to meaningful and equal participation, which would seriously affect their livelihoods and cultural identity. If the Cajamarca mining project is developed, it is likely to affect traditional practices, the source of economic livelihood and well-being, as well as the cultural identity around peasantry that the local communities of Cajamarca have appropriated since the 1930s.

²⁸ See for example evidence from the Colectivo de Abogados José Alvear Restrepo <https://www.colectivodeabogados.org/presentamos-12-ejemplos-de-impunidad-corporativa-de-las-multinacionales-del-carbon-en-la-guajira/> and Centro de Investigación y Educación Popular Programa por la Paz <https://www.nocheyniebla.org/wp-content/uploads/2020/10/NOCHE-Y-NIEBLA-61.pdf>

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, it would be key for the Special Rapporteur to recommend the States engage in good faith in urgently advancing a strong and actionable legally binding instrument that would put forward the demands of people and communities affected by corporate power – and as such promoting accountability and an end to corporate impunity.

The Committee on Economic, Social and Cultural Rights' General Comment 24 on State obligations under the ICESCR in relation to Business Activities provides a useful reference on extra-territorial state obligations as the elaboration of the treaty text advances. There must also be a clear articulation of legal liability for both States and corporate entities as negotiations advance.²⁹

²⁹General comment No. 24 (2017) on State obligations in the context of business activities. See: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context>