

Latin-America CSO Consultation on the Forthcoming UN Treaty on Human Rights & Business

May, 2016 – Mexico City, Mexico

About the Treaty Initiative Project



ESCR-Net and FIDH together have a combined membership of almost 450 human rights organizations and activists, in more than half the countries of the world. Both of these global networks have been central to calls to strengthen the international legal framework and its implementation for more than a decade. This **Treaty Initiative** project emanates directly from the civil society statement developed at the ESCR-Net Peoples' Forum on Human Rights and Business in Bangkok, in 2013. The statement, which gained the support of over 1000 signatories from more than 600 organisations and 400 individual activities in over 90 countries, called for the development of an open-ended intergovernmental working group with a mandate to develop an international legally binding instrument to effectively address corporate human rights abuses and ensure that effective accountability and redress mechanisms are available.

Following the development of a new UN Intergovernmental Working Group to create a legally binding instrument to address corporate-related human rights violations in June 2014, the Corporate Accountability Working Group (CAWG) of the International Network for Economic, Social and Cultural Rights (ESCR-Net), together with the International Federation for Human Rights (FIDH), launched a joint two-year project called the Treaty Initiative in January 2015. As part of this project, a Legal Group (LG) has been established to help coordinate collective content proposals with civil society in all regions that shape and influence the new UN treaty.

The project is committed to promoting the perspectives and advocacy of affected people in the treaty process. In order to achieve that, in 2015 and 2016 the project held consultations and strategy meetings in various regions of the world with the LG and representatives of civil society, including groups affected by corporate-related human rights violations. Legal proposals developed from the consultations will be available to CSOs to support their advocacy and provided to UN mission delegates for their consideration leading into the meetings of the UN Intergovernmental Working Group (IGWG), which is comprised of any UN member states willing to join in the process to elaborate a new binding treaty on business and human rights.

The project is also supporting the development of the advocacy architecture required in each region to support a coordinated global push for the creation and adoption of an effective treaty. These regional advocacy platforms, led by regional CSOs, coordinate advocacy activities that support the creation and implementation of the UN treaty, while also providing a platform in each region for CSOs to collectively advance their own national and regional corporate accountability activities. In this way the regional advocacy initiatives emanating from this project also provide the invaluable opportunities for CSOs in each region to leverage the international attention on the international treaty and to promote more localized demands for reform and accountability at the sub-national, national and regional level. For more information visit www.escr-net.org/cawg/treatyinitiative.



Key corporate-related human rights issues in Latin America

Civil society presentations

CSOs and community leaders were divided in 4 sub-regional groups: Andean region, Southern Cone, Meso-America and Brazil. The format of the consultation was designed for each sub-regional group to present on five major themes for discussion: the types of corporate-related human rights violations they experienced, the groups that were most affected by these violations, the type of remedies they desired, their experiences seeking remedy so far, and the key priorities that groups wished to be reflected in the treaty. Each group gave powerful and targeted presentations and were followed by lively question and answers plenary sessions, during which CSOs and members of the LG deepened exchanges on priorities and options for the UN treaty.

1. Types of violations

Sub-regional groups' presentations showed important similarities regarding corporate related abuses taking place throughout Latin America. The violations repeatedly invoked by the different groups concerned labour rights, land rights, access to information and environmental protection.

The violations related to labour rights highlighted by the participants included violations of the rights to freedom of association, discrimination on the basis of race, ethnicity, sex, religion or disability, illegal subcontracting or outsourcing, and precarious working conditions including instable access to employment. Violations to indigenous peoples' rights included infringement on the right to self-determination and lack of respect for indigenous peoples' culture, tradition and sacred sites. Participants emphasized on violations of the right to free prior and informed consent through adequate consultation processes.

Participants highlighted a number of violations of economic, social and cultural rights, such as the right to adequate housing, the right to health, and the right to food all in connection with forced eviction, expropriations and illegal dispossessions. These concerns were also associated with rights to be involved in decision making related to the exploitation of local natural resources, and the intrinsic links with a broader array of civil and political rights such as a lack of adequate consultation, lack of access to information, as well as violations to the rights of freedom of movement, individual and common property rights, and ultimately repression as a reaction to the claiming of rights through advocacy and public demonstrations.

Furthermore, participants also highlighted environmental damage caused by corporate activities, particular mineral extraction, including pollution of water sources, air and soils, inadequate management of toxic waste, as well as damage to ecosystems through deforestation and destruction of mangroves, coral reefs and fishing areas.

Participants drew a clear link between violations they're experiencing and the lack of an adequate and sufficiently strong legal framework. In addition, participants noted the link that undue corporate influence has on state agencies and the judiciary in their countries. In particular, the resulting impacts noted by participants includes to impunity for human rights violations and a lack of impartiality among courts and state officials responsible for establishing accountability, and at it's worst this political environment contributes to the permissive attitude towards the criminalization of human rights defenders, journalists and researchers, as well as the accepted use by the state the armed forces, private security or organised crime to attack and intimidate human rights defenders.

2. Affected groups

The CSO presentations illustrated that there was a strong consistency across different sub-regions of the types of groups that are most affected by corporate human rights violations, including women, indigenous people, peasants, afro-descendants and union activists.

Women were reported to be particularly affected by corporate human rights violations across all the Latin American sub-regions. For example, regarding employment, CSOs reported how women are more likely to be employed in the informal sector, where labour conditions are less favourable, there are lower wages and less long-term and stable jobs. The impact of corporate operations on people living in local rural communities is often particularly felt by women, particularly indigenous women, as it is they that most commonly responsible for securing access to water, food and other basic needs. These sources of livelihood, health and well-being are easily undermined by corporate operations that utilize local land and natural resources.

The investment projects in Latin America that cause the most significant impacts are mainly in the extractive sector, which often are located in the proximity of, or directly overlap, indigenous territories. Participants reported that corporate activities tend to interfere with the strong interrelationship indigenous peoples' culture and livelihoods has with their land, environment and sources of natural resources. Hence, participants noted that indigenous people are predisposed to be more vulnerable to corporate human rights violations, which compounds the pre-existing vulnerabilities that indigenous people face even before considering the effect of corporate operations.

Other groups highlighted as especially affected include peasants, afro-descendent communities and workers. Among these groups, the gravity of negative impacts varies according to age, gender, socioeconomic and health conditions.

Finally, other groups flagged as particularly affected by corporate violations included social and local leaders, union members, journalist from alternative medias, and lawyers. Unlike the groups mentioned above, these are targeted by their activities which usually consist in denouncing the negative impacts of corporate activities.

3. Remedies

General considerations

Participants in the meeting expressed the need for the pursuit of remedies to be led by affected communities, especially in the process of identifying the expected type of reparations. Participants also stressed the need for the pursuit of a specific remedy through a particular mechanism is only effective when it is part of a wider holistic strategy to obtain justice and accountability. For example, due to the difficulties in accessing justice as a result of the lack of impartiality, of the judiciary's costly and lengthy proceedings, and the use of complex legal terminology, some of the participants mentioned the power of using public media to expose the abuses committed by corporations as a means of pressuring for meaningful reparations for the adverse impacts caused by their activities.

Legal obstacles to accessing remedies

Considering the formal judicial and non-judicial systems for seeking effective remedy, participants outlined obstacles they face including the lack of effective monitoring and enforcement of judgements, financial constraints, legal frameworks favoring enterprises' interest over

communities' fundamental rights, and the imbalance of political and economic power between and corporations and local communities. Some of these difficulties are aggravated by the lack of legal recognition of common land title that communities informally exercise, as well as the general lack of cooperation between affected communities and state agencies.

Remedy and corporate capture

Groups particularly recognised the additional challenges posed by corporate capture of the state, including armed forces, the parliament and judiciary. For example, it was acknowledged that corporations, and those acting in their interest, frequently prevent the adoption and implementation of laws that realise human rights and protect the environment, as well as weaken supervisory authorities that can hold corporations accountable. All these contributions of corporate capture undermine the pursuit of remedy and accountability.

Types of desired remedy

Legally requiring full and adequate compensation for all abuses resulting from corporate-related abuses was highlighted as an important preventive measure. However, participants emphasized the need to understand adequate compensation as going beyond economic compensation to include reforestation, land restitution, environmental rehabilitation and measures for social, physical and emotional recovery, among other elements that constitute adequate reparation for violations. Furthermore, the collective dimension of reparations was strongly emphasized in the presentations. Collective rights of indigenous peoples and other ethnic groups need specific types of remedies. Moreover, restituting collective territories and implementing and reinforcing local community projects, such as agroecology, and permaculture, are important to maintain the customs and traditions that have been affected by corporate abuses, as well as reinforced means of livelihood and survival for communities.

The importance of establishing guarantees of non-repetition was also stressed. This measure should be part of an effective remedy and serve to prevent the same violations from occurring again in the future. Punishment for helping strengthen the incentive for non-repetition might include judicial or administrative sanctions such as the suspension of corporate licenses, permits or concessions. Likewise, it was also suggested that civil servants who contribute to corporate related abuses, or fail to prevent them, should also be sanctioned.

Other types of remedy were also mentioned in the discussion. For example, public apologies from both government and corporate actors play an important role but only as part of broader array of measures that also provide reparation and retribute. Ultimately, participants stressed the need for strong independent powers to maintain permanent monitoring of the activities of corporations, and powerful means to punish and remedy corporate human rights violations using a coherent and broad system that addresses violations from the perspective of affected people and communities.

4. Priorities for the treaty

Affected-people orientation to the treaty

Considering the need to guarantee the right to an effective remedy participants stressed the need for the treaty to adopt an approach orientated from the perspective of affected people and communities, making sure to redress power imbalances, systemic inequalities engrained in the operation of judicial systems, including addressing heavy burdens of proof for those affected. Furthermore, the need to ensure access to justice at the international level was underlined as a key means of holding national and regional systems for ensuring accountability and access to effective remedies.

The primacy of human rights

Participants from all sub-regions agreed that the development of the treaty should reaffirm, and be contextualized throughout by, the primacy of human rights, particularly considering the authority that states provide to investors through trade and investment treaties which reinforce economic priorities at the expense of human rights and the environment. In this sense, the treaty should reinforce the legal human rights law obligation of states to guarantee the human rights of people in their territory and jurisdiction above all economic concerns.

Scope of the treaty

Regarding the scope of the treaty, as in other regions of the world, there was a unanimous call for all human rights to be included. Likewise, all groups agreed that all business should be covered by the treaty, be them national, state-owned or multinational corporations. Sub-regional groups insisted on the inclusion of liability for all corporate actors that contribute to human rights violations throughout the supply chain including the decisions of parent companies and the actions of suppliers, contractors, sub-contractors and subsidiaries. As such, all these corporate actors should be held accountable for the human rights violations they commit or to which they contribute.

Extraterritorial obligations (ETOs)

In order to ensure the state-based international legal system is capable of bridging gaps across judicial and other legal systems, participants strongly emphasized the need for extraterritorial obligations (ETOs) to be a robust and central aspect of the future treaty.

ETOs were expressed in this way as a central component for ensuring adequate and effective remedy and justice for affected people and communities in the context corporate human rights violations by transnational corporations, or at the hands of national companies in the service of transnational corporate supply chains.

Preventative and deterrent measures

Among the preventive measures outlined were mandatory human rights and environmental impact assessments, legal requirement to apply 'the precautionary principle' for corporate activities, as well as legal prohibition of activities which generate serious and/or irreversible damages, including the deviation of water sources. Among other measures considered by participants to deter repetition of corporate human rights violations participants suggested including suspension of corporate licenses, permits or concessions as options available to judicial, non-judicial or administrative supervisory bodies.

Involvement of affected people in decision making and monitoring

A common priority expressed by participants was the legal requirement to ensure consultation with, and unimpeded access for monitoring by, affected communities. Another priority was the legal recognition of public hearings and consultations as legitimate expressions of communities' views on projects and should be a mandatory component of any project that may potentially adverse impact local people and communities. Therefore, mandatory free prior and informed consent should be reaffirmed in the treaty.