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To: Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights,  
Office of the High Commissioner for Human Rights (OHCHR)  
CC: Laurent Sauveur, Chief External Outreach, OHCHR

Ref.: Partnership between the OHCHR and Microsoft

17 October 2017

Dear High Commissioner,

ESCR-Net – the International Network for Economic, Social and Cultural Rights is the largest global network of organisations and activists devoted to achieving economic, social and environmental justice through human rights, consisting of over 280 organisational and individual [members](#) in 75 countries. Many ESCR-Net members, including those in the [Corporate Accountability Working Group](#), engage closely with the Office of the High Commissioner for Human Rights (OHCHR). We deeply value the role played by the OHCHR and share its commitment to promote and protect human rights for all.

We write with respect to the OHCHR's [announcement](#), on 16 May 2017, of a 'landmark' five-year partnership with Microsoft. The OHCHR noted that "[a]s part of the agreement, Microsoft will provide a grant of USD 5 million to support the work of the UN Human Rights Office. This represents an unprecedented level of support from a private sector organization." Our secretariat sought further information from the OHCHR, and we appreciate the information provided during this exchange. Among other things, we understand from that communication that: the OHCHR and Microsoft have entered into a funding agreement and a pro bono support agreement; that the OHCHR has an internal policy regarding partnerships with the business sector, which outlines the due diligence process in relation to proposed partnerships; that the OHCHR is unable to make either the agreements or policy publicly available at this time, although it is currently reviewing this rule internally; that Microsoft will not be directive in the use of the funds provided, so long as they fall within four agreed pillars of work;<sup>1</sup> that OHCHR will provide annual reports to Microsoft advising how the funds have been applied.

<sup>1</sup> We understand these to be: (1) human rights online, i.e. financial support to the OHCHR's work in this area (freedom of expression, etc); (2) innovation and technology, including the funding and creation of 'Rights View', an information dashboard; (3) business and human rights, i.e. financial support to the OHCHR's work on the UN Guiding Principles, etc; and (4) outreach/communications.

However, despite the further information provided, many ESCR-Net members continue to have serious concerns regarding a partnership between the OHCHR and a corporation, given the actual or perceived influence of corporations on the OHCHR's independence. There is significant global concern about the increasing influence of corporations in both domestic and international decision-making institutions. As set out in ESCR-Net's [Corporate Capture project](#), 'corporate capture' refers to the means by which corporations undermine the realisation of human rights and the environment by exerting undue influence over domestic and international decision-makers and public institutions. Across the world, many communities have seen their human rights negatively impacted when corporate interests – instead of human rights obligation, wider public interest and participation – shape policies, practices and institutions. This occurs in various ways, including through [legislative and policy interference](#),<sup>2</sup> [community manipulation](#), [economic diplomacy](#), [judicial interference](#), [privatisation of public security services](#), and through [revolving door](#) practices.

Such corporate capture practices are extensive and impact on the enjoyment of human rights globally. UN special procedure mandate holders have noted patterns of disproportionate influence by private interests in policy-making related to, for example, land use<sup>3</sup>, health<sup>4</sup> and food<sup>5</sup>. The OECD and other commentators have noted the connection between corporate tactics to persuade governments to meet their interests and a dwindling trust in government integrity and decision-making.<sup>6</sup> Governments have taken active steps to separate the *regulation* of industries (including persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of policies impacting a particular industry) from the *commercial and other vested interests* of those industries.<sup>7</sup>

Impartiality is critical to OHCHR's work. As stated in Resolution [A/RES/48/141](#) that established the mandate of the OHCHR, "there is a need for the promotion and protection of all human rights to be guided by the principles of impartiality, objectivity and non-selectivity". In this sense, we recognise that the OHCHR engages in dialogue with private sector corporations with respect to preventing and addressing human rights abuses and violations; however, participating in such dialogue is clearly distinct from accepting large sums of money from corporations to fulfil the OHCHR's mandate. The UN Charter establishes that it is under the responsibility of Member States the coverage of the expenses of the activities of the UN through financial contributions<sup>8</sup>. More specifically, General Assembly Resolution A/RES/48/141 that establishes the OHCHR "Requests the Secretary-General to provide appropriate staff and resources, within the existing and future regular budgets of the United Nations, to enable the High Commissioner to fulfil his/her mandate, without diverting resources from the development programmes and activities of the United Nations". Therefore, the UN regular budget should finance all activities mandated by the General

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<sup>2</sup> When corporations exert undue influence – through opaque lobbying practices, benefits, rewards or kickbacks, and/or provision of campaign or other donations – on legislators and policy-makers, to gain access to powerful decision-makers or to unduly influence draft legislation, policy or voting supportive of corporate interests over human rights obligations and environmental standards.

<sup>3</sup> [Report of the Special Rapporteur on adequate housing](#) as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/70/270 (4 August 2015), para. 55.

<sup>4</sup> [Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health](#), UN Doc. A/69/299 (11 August 2014), para. 4.

<sup>5</sup> [Report of the Special Rapporteur on the right to food](#), UN Doc. A/HRC/34/48, March 2017, para 87.

<sup>6</sup> See, for example, OECD, [Lobbyists, Governments and Public Trust, Volume 3: Lessons Learned from Implementing the OECD Principles on Transparency and Integrity in Lobbying](#); Tamasin Cave and Andy Rowell, 'The trust about lobbying: 10 ways big business controls government' (12 March 2014) *The Guardian*.

<sup>7</sup> See, for example, WHO, [Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control](#), adopted by the Conference of the Parties at its third session (decision FCTC/COP3(7)). The Guidelines provide for a comprehensive and effective separation between the regulation of tobacco and the commercial and other vested interests of the tobacco industry.

<sup>8</sup> [Charter of the United Nations](#), Chapter IV, article 17.2

Assembly and its subsidiary organs, including the Human Rights Council (HRC). The reality, however, is that the regular budget only allocates 3.5 per cent of the total UN regular budget to the human rights pillar<sup>9</sup>.

It is important to acknowledge the differences between States and businesses. States are charged with upholding agreed obligations to respect, protect and fulfil human rights, and citizens can engage in (varying forms and degrees of) democratic processes to ensure that the actions of State authorities represent their interests. By contrast, the primary purpose of all businesses – from the most socially progressive business to the most egregiously abusive – is to make a profit, despite growing pressure on corporations to respect human rights and environmental protections. Indeed, despite various advances over recent years, the UN itself has recognised the need for strengthened corporate regulation in the current climate, as reflected in the UN Human Rights Council’s formal process towards the development of a binding international treaty on corporations and human rights.<sup>10</sup>

It is vitally important that international human rights institutions like OHCHR maintain both real and perceived independence from corporate interests. We do not intend to suggest a lack of integrity within the OHCHR; however, we are concerned about the potential influence such an arrangement may have on the work of OHCHR and the damage such arrangements could do to public perception of the OHCHR’s work, particularly given the lack of transparency. The interactions arising through a formal partnership – particularly where it contains the possibility of renewed financial support if the company is happy with the arrangement – may, indirectly or unconsciously, influence, or have the appearance of influencing, the direction of OHCHR’s human rights activities generally, and specifically with respect to scrutiny of Microsoft’s business activities (should the occasion arise) or other business and human rights issues impacting Microsoft and other corporations.

Our network is aware of the severe funding challenges experienced by the OHCHR and the necessity of taking a proactive approach to address these challenges through increased voluntary donations, and our members are committed to supporting the adequate funding and effective operation of the OHCHR over time. As such, ESCR-Net members respectfully call on States to provide adequate funding to the OHCHR to allow it to realise its mandate, and negate the need to seek or obtain funding from corporations.

At the very least, complete transparency with respect to the terms of the financial (and non-financial) support to be provided by Microsoft, as well as all policies, procedures and safeguards the OHCHR has in place to ensure the arrangement does not influence its work, is critical to assure the public that private multinational corporations are not dictating and will not dictate the work of the OHCHR. In setting out a policy on funding partnerships, that should be guided by principles that include transparency (such as including a requirement that any donor agreement be published in its entirety). The policy on receiving funds must adequately counter the concerns of undue influence and corporate capture that have been raised. Furthermore, this partnership with Microsoft and eventual future private sector partnership to OHCHR should be guided at least by CESCR [General Comment 24](#) which has strong recommendations on the matter of corporate capture.

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<sup>9</sup> See, for example, [OHCHR’s funding and budget](#)

<sup>10</sup> See <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>.

As “the principal United Nations office mandated to promote and protect human rights for all, [leading] global human rights efforts [to] speak out objectively in the face of human rights violations worldwide”<sup>11</sup>, the continued confidence of communities around the world in the OHCHR is essential. ESCR-Net Members and allies have looked to OHCHR to support constructive and participatory approaches to addressing human rights abuses and violations and the underlying systemic and structural conditions that lead to such violations, as well as the creation of rights-based standards, structures and practices globally. Therefore, ESCR-Net members respectfully request:

1. That the OHCHR ceases its current policy of pursuing and/or receiving funding from corporations.
2. In the meantime, or in the event that this does not occur, that the OHCHR makes public (1) the funding agreement with Microsoft, (2) the pro bono agreement with Microsoft, (3) its current internal policy on partnerships with the business sector, and (4) the due diligence process and report completed with respect to Microsoft specifically.<sup>12</sup> In this regard, we welcome the news that the policy of non-disclosure of such agreements and policy is currently being revisited by the OHCHR. We respectfully suggest that this internal review process be transparent and participatory, to understand and address civil society concerns with respect to corporate capture practices.

Thank you for considering these concerns and requests. We welcome the ongoing opportunity to be in dialogue with the OHCHR based on our shared commitment to advance human rights.

Sincerely,



Chris Grove  
Executive Director, ESCR-Net

This letter has been developed by ESCR-Net’s Corporate Accountability Working Group, which leads the Network’s collective actions in relation to business and human rights.

**Signatories from the ESCR-Net Corporate Accountability Working Group**

Above Ground (Canada)	Fédération internationale des droits de l'Homme (France)
Accountability Counsel (USA)	FIAN International
Action Contre Impunitie Pour Les Droits Humains	Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (Argentina)
African Resources Watch (AfreWatch) (DRC)	Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)

<sup>11</sup> From <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>.

<sup>12</sup> We note that Microsoft is an extremely large and economically powerful corporation, listed as 28<sup>th</sup> on the 2017 Fortune 500 list, with a 2016 revenue of over USD 83 billion, see: <http://fortune.com/fortune500/microsoft/>. Further, we note that human rights concerns have been raised previously with respect to Microsoft, for example: In 2013, Microsoft was alleged to have handed encrypted emails to the NSA (US intelligence) via the Prism program, revealed by Edward Snowden (<https://www.theguardian.com/world/2013/jul/11/microsoft-nsa-collaboration-user-data>); in 2016, France ordered Microsoft to stop collecting excessive data and then targeting advertising without consent (<https://www.theguardian.com/technology/2016/jul/20/france-microsoft-user-data-collection-privacy>); Amnesty International’s report “This is What We Die For” (2016) accuses Microsoft, as well as Apple and Samsung, of “the worst forms of child labor” and other violations in the production of electronics (<http://www.newsweek.com/apple-samsung-and-microsoft-linked-child-labor-abuse-claims-417313>).

Al-Haq (Palestine)	Habi Center for Environmental Rights (Egypt)
Alternative ASEAN Network on Burma	Human Rights Law Network (India)
Arab NGO Network for Development (Lebanon)	Human Rights Law Resource Centre (Australia)
Asian Forum for Human Rights and Development (Thailand)	Inclusive Development International (USA)
Asian Indigenous Peoples' Pact (Thailand)	International Accountability Project (USA)
Asia Pacific Forum on Women, Law and Development (Thailand)	Justiça Global (Brazil)
Asociacion Pro Derechos Humanos (Peru)	Kenya Human Rights Commission
Association for Women's Rights in Development	Legal Resource Centre (South Africa)
Association of Environmental Lawyers of Liberia - Green Advocates	MiningWatch Canada
Center for Constitutional Rights (USA)	Movement for the Survival of the Ogoni People (Nigeria)
Center for International Environmental Law (USA)	Narasha Community Development Group (Kenya)
Centre for Applied Legal Studies (South Africa)	National Center for Advocacy Studies (India)
Centre for Human Rights and Development (Mongolia)	National Economic and Social Rights Initiative (USA)
Centro de Derechos Humanos de la Montaña Tlachinollan (Mexico)	National Fisheries Solidarity Organization (India)
Centro de Estudios Legales y Sociales (Argentina)	Natural Resources Alliance of Kenya
Centro Mexicano de Derecho Ambiental A.C (Mexico)	Network Movement for Justice and Development (Sierra Leone)
Chiadzwa Community Development Trust (Zimbabwe)	Observatorio Ciudadano (Chile)
Citizen News Service (India)	Organización Fraternal Negra Hondureña (Honduras)
Citizens for Justice (Malawi)	Otros Mundos Chiapas (Mexico)
Comite Ambiental en Defensa de la Vida (Colombia)	Posco Pratirodh Sangram Samiti (India)
Conectas Direitos Humanos (Brazil)	Project on Organizing, Development, Education and Research (Mexico)
Confederación Campesina Del Peru	Proyecto de Derechos Económicos, Sociales y Culturales (Mexico)
Consejo de Pueblos Wuxhtaj (Guatemala)	Red Internacional de Derechos Humanos (Switzerland)
Coordinadora Andina de Organizaciones Indígenas (Peru)	Rights and Accountability in Development (UK)
Corporate Accountability International (USA)	Sahmakum Teang Tnaut (Cambodia)
Defend Job Philippines	Tebtebba Foundation (Philippines)
The Democracy Center (Bolivia)	Terra de Direitos (Brazil)
Desarrollo, Educación Y Cultura Autogestionarios, Equipo Pueblo A.C. (Mexico)	Video Volunteers (India)
Due Process of Law Foundation (USA)	Zimbabwe Environmental Law Association
Equitable Cambodia	