



Towards a Strong Treaty to Regulate Corporate Activity: Preventing Corporate Capture

The treaty provides an important opportunity to address the ways that corporations influence government decision-making and public institutions to promote their interests over human rights and environmental sustainability standards and protections. In advance of the UN intergovernmental working group's 3rd session to discuss the proposed treaty (Geneva, 23-27 October 2017), we encourage government representatives and civil society advocates to keep the following points in mind during negotiations, and to consider whether the draft treaty text adequately addresses corporate capture.

We recommend that states:

(1) Recognise that corporate capture manifests in a range of ways, including through:

- **Community Manipulation:** Corporations ignore or actively undermine community decision-making processes to advance their interests. Strategies include the use of financial and other incentives, and intimidation and violence, to secure community leaders' support in circumstances that undermine wider community interests.
- **Economic Diplomacy:** Governmental diplomatic missions advance the interests of corporations at the expense of local people's human rights.
- **Judicial Interference:** Corporations use incentives, threats and disproportionate resources to influence judicial processes and outcomes, undermining due process, effective access to remedy and accountability for human rights abuses.
- **Legislative and Policy Interference:** Corporations use opaque lobbying practices, provide campaign donations and other rewards, and threaten or pressure legislators and policy makers to influence public decision-making.
- **Privatisation of Public Security Services:** Corporations provide police, armed forces and other public security services with remuneration and other incentives to promote the company's interests at the expense of local communities. Among other tactics, these actors confront peaceful demonstrators, gather intelligence on local communities, intimidate those who question corporate projects, and impose arbitrary or unlawful arrests and detentions.
- **Revolving Door Practices:** Movement by employees between the private and public sectors, with resulting conflicts of interest. Staff shifts between corporations and government can undermine the impartiality of state agencies, facilitate corporate-friendly regulation and policy, erode regulatory enforcement and facilitate procurement by state agencies.

(2) Recognise that corporate capture practices erode public trust in the state

States are charged with upholding agreed obligations to respect, protect and fulfil human rights. While citizens can, to varying degrees, engage in democratic processes to ensure that the actions of state authorities are consistent with these obligations and that they represent the broad public interest, corporations consistently gain disproportionately greater access to and influence over state actors through corporate capture practices. The state cannot operate as an impartial defender of democratic principles and institutions, including the rule of law, if it is unduly influenced by any one sector of society. This is particularly true with the business sector, whose primary motivation of private economic gain is often at odds with broader public interests.

(3) Take appropriate measures to prevent corporate capture and its impacts on human rights and environmental sustainability

- States must establish effective legislative, policy and enforcement mechanisms to limit corporate influence over public processes and actors.¹ Among other measures, states should adopt ‘good governance and conflict of interest mitigation’ legislation that establishes: transparency and accountability in all dealings between state agencies and corporations; requirements that diplomatic staff comply with state human rights obligations; obligations that corporations and state actor respect community decision-making processes; safeguards to ensure the independence of legislators, policy-makers and the judiciary; mechanisms to control the ‘revolving door’ between state agencies and corporations; and prohibitions on the use of state police, armed forces and other public security services by corporations.
- States must take measures to ensure that the treaty negotiations are not captured by corporations.

Take action!

- ➔ Visit the official [UN webpage on the treaty process](#) for updates, information about civil society engagement, and to review the draft text of the treaty (from October)
- ➔ Visit the Corporate Accountability Working Group [webpage on the treaty process](#) and [project on corporate capture](#) for useful updates, key documents and advocacy support
- ➔ Join the online conversation using hashtags [#StopCorporateAbuse](#) and [#BindingTreaty](#)

Please visit ESCR-Net’s Corporate Accountability Working Group webpage on the treaty <https://www.escr-net.org/corporateaccountability/hrbusiness treaty> for accessing more materials and the links in this document.

The ESCR-Net [Corporate Accountability Working Group](#) coordinates collective action to confront corporate capture, challenge systemic corporate abuse and advocate for new accountability and remedy structures. The [International Network for Economic, Social and Cultural Rights \(ESCR-Net\)](#) connects over 280 social movements, indigenous peoples’ groups, NGOs and advocates across more than 75 countries to build a global movement to make human rights and social justice a reality for all.

¹ See for example the World Health Organization’s [Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control](#) (2008), which controls the tobacco industry’s involvement in public policy-making.