



Towards a Strong Treaty to Regulate Corporate Activity: Protecting Human Rights Defenders and Ensuring Enabling Environments for Human Rights Activity

The treaty provides an important opportunity to affirm existing state obligations to respect, protect and fulfil the human rights of women and men human rights defenders (HRDs), strengthen existing HRD protections, and highlight the legitimate and fundamental role that HRDs play in identifying, mitigating, exposing and ensuring accountability for any adverse human rights and impacts on people and the environment associated with corporate activity and development projects.

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 addresses these concerns adequately.

We recommend that states:

(1) Protect HRD individuals and communities

- States have the obligation to respect, protect and fulfil the rights of **all** HRDs in connection with corporate activity, in accordance, at a minimum, with the [UN Declaration on Human Rights Defenders](#), the [UN Resolution on the protection of women human rights defenders](#), and other relevant international instruments. Among other measures, states should establish official protection mechanisms to provide emergency support and security for HRDs and prevent threats or attacks.
- States should pay particular attention to, and take appropriate legislative, policy and measures to address the threats and attacks facing, HRDs working on corporate accountability, especially women human rights defenders (WHRDs) and those who belong to or work with marginalised sections of society, including (among others) impoverished communities, indigenous peoples, and ethnic and other minorities.
- Home and host states must ensure the right to effective remedy for human rights violations or abuses experienced by HRDs working on issues of corporate accountability, whether perpetrated by states, corporations or other non-state actors. Among other measures, states must ensure the primacy of human rights in any international trade and investment activities, and engage in international cooperation and assistance to facilitate access to justice.

(2) Cease and protect from restrictions on the spaces in which human rights activity takes place

- **Physical spaces:** states must refrain from restricting, and take legislative and other appropriate measures to protect against corporate activity that restricts, the spaces in which people can be present, meet with others, participate in peaceful protest, and engage in decision-making processes. Among other steps, states should (1) pay particular attention to the human rights to freedom of expression, association, and assembly, and freedom from cruel, inhuman or degrading treatment, and (2) refrain from and protect against force, threats or other tactics to repress human rights activity by private or state security services acting on behalf of corporate interests.
- **Repressive legal and political frameworks:** states must refrain from the criminalisation of legitimate HRD activity, and from drafting or applying restrictive or vague laws – such as those relating to national security, counter-terrorism, and defamation – to inhibit the work of HRDs. States must refrain from, and protect against corporate activity that constitutes interference with HRD online access to information and communication, their financial freedom, and/or any trade union activities. To prevent and counter such repression, defamation or other forms of stigmatisation, states should review and amend existing legislation and policy with the aim of mainstreaming HRD recognition and protections, and take proactive public measures at the local and national levels to reiterate the critical importance of HRDs and to facilitate their activities.

(3) Put affected communities at the centre of discussions related to the human rights impact of corporate activity

- Attacks, harassment, restrictions, intimidation and reprisals, including arbitrary arrest and detention, disappearances, judicial harassment, torture and ill-treatment, and even killings of HRDs, are not random one-off incidences, but instead reveal underlying and ongoing social justice issues that perpetuate cycles of HRD action and backlash against such action, and may also highlight and perpetuate historic structures of discrimination, such as racism and sexism. states must make it clear that activities which privilege corporate interests and the motivation of private economic gain over the enjoyment of human rights and a sustainable environment are not acceptable.
- States should recognise and support the leadership and contributions made by communities affected by corporate-related abuses to generate sustainable economic and development models that align with the human rights framework and minimise environmental impacts. States must create an enabling environment to ensure that affected communities are at the centre of discussions and decision-making about corporate interaction with local communities and the natural world, including:
 - Mandating human rights and environmental due diligence, project assessment and implementation, monitoring and evaluation, and ensuring the rights of people affected or potentially affected by corporate activity to participate actively, freely and meaningfully in these processes.
 - Respecting the principle of free, prior and informed consent of indigenous people, and other groups relying on or having an inherent connection with land, in relation to all corporate activity that could affect their rights.

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](#) for useful updates, key documents and advocacy support
- ➔ Visit the webpage of the [UN Special Rapporteur on the situation of human rights defenders](#)
- ➔ Join the online conversation using hashtags [#StopCorporateAbuse](#) and [#BindingTreaty](#)
- ➔ Read the UN Committee on Economic, Social and Cultural Rights' [statement on human rights defenders and ESCR](#) and [General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities](#) – with particular reference to the leadership and role of indigenous people
- ➔ Read the [Model National Law on the Recognition and Protection of Human Rights Defenders](#) – developed by ISHR in collaboration with over 500 defenders from every region, and settled and adopted by 28 of the world's leading human rights experts and jurists

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. ESCR-Net's [System of Solidarity](#) leverages the collective voice of ESCR-Net – through online petitions, collective letters, outreach via social and mainstream media, and the sharing of resources and tools – to increase protection for HRDs under threat, prevent imminent human rights violations from taking place, and monitor patterns of human rights violations against HRDs. 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.