

## **African Civil Society Seeking a Treaty to Stop Corporate Abuse and Provide Real Remedies for Affected People**

### **Africa and the Middle East Treaty Consultation**

**Africa remains the site of some of the most egregious corporate-related human rights abuses. A treaty provides a promising pathway towards the construction of the next generation of binding international standards and mechanisms that can contribute to empowering Africans to engage in forms of development that respect human rights, while ensuring protection against corporate abuses and providing a multi-layered effective remedy system for the women, children, indigenous peoples and other affected communities across the African continent.**

As cases in all corners of Africa have illustrated, communities are all too often excluded from the processes that decide how domestic and international corporate investment projects are designed and operated, and when they cause human rights impacts those affected are all too often left without any meaningful remedy. Instead those impacted often find themselves marginalized and criminalized by state and corporate authorities in the process of seeking the realization of their human rights. A treaty holds some promise of beginning to redress these imbalances.

This statement is a common pronouncement of the positions of African civil society organisations (CSOs), including indigenous peoples, that engaged in the October 23-25 African CSO Consultation of the ESCR-Net & FIDH Treaty Initiative in Nairobi, co-hosted together with the Kenya Human Rights Commission. The following are the main elements emanating from the CSO consultation and while not exhaustive are intended as a first substantive contribution from these organisations into the process of negotiating a treaty in Geneva.

## ***Remedy & enforcement***

African CSOs understand the benefits and interactions between both judicial and non-judicial systems of remedy and accountability. The systems designed to provide remedy for affected individuals and communities must be integrated across local, national, regional and international systems, ensuring the creation of a consistent structure that provides a meaningful remedy that is fully enforceable. This could provide the legal basis for corporations to become capable of being sued for human rights violations they commit in both their home and host state jurisdictions and beyond in local, national, regional and international judicial mechanisms designed to address corporate human rights violations.

We emphasize that the treaty must ensure provision is made for all forms of civil, criminal and administrative relief. In all judicial proceedings civil society must have legal standing to bring and file complaints. In all judicial and non-judicial procedures the treaty must outline a maximum processing time for determining cases of corporate-related human rights abuses. The decisions of all mechanisms must be binding upon the corporations and state agencies involved.

For judicial mechanisms, the treaty should consider establishing a specialized international mechanism to address cases involving corporate-related human rights abuses. This mechanism should also function as a global supervisory mechanism for implementation of the treaty, while also determining cases originating from national and regional systems.

Civil society must have formal and active roles to play in monitoring the implementation of the treaty, whether by jointly engaging in the production of regular oversight procedures and reporting, or other creative means of CSO involvement.

At project level, the treaty must require companies to establish grievance mechanisms, while in no way interfering with the internationally recognized human rights of affected people to have their complaints heard in a judicial system, including in the judicial system of a corporation's home country.

***The treaty must fully restate and facilitate the implementation of the right to free, prior, and informed consent***

African CSOs are concerned that previous international efforts have not adequately evaluated the prevailing approaches to corporate investment and economic development, in particular by failing to fully adhere to the right to free, prior and informed consent in the context of corporate activities. African CSOs therefore urge African Governments in particular, as well as all Governments generally, to ensure the right to free, prior, and informed consent is explicitly codified in the treaty, as an important step toward ensuring development and investment models begin to urgently address their prevailing tendency to systematically undermine the realization of human rights.

***Coverage of national and transnational corporations***

Since all corporations are able to violate human rights, the treaty should apply to all corporations, both national, multinational, private and state-owned companies, while paying particular attention to closing the most significant gaps in the current international legal system.

While national corporations are covered by current national law, there are significant disparities in the way each state goes about regulating and overseeing corporations registered in their territory and subject to their jurisdiction. A treaty can help clarify this and develop a more uniform system of legal requirements across states. Covering national and transnational companies in the treaty will also ensure companies cannot exploit any future disparities in the international legal system to avoid accountability.

### ***Extraterritorial obligations***

To ensure any future treaty is most effective for those affected by corporate related human rights abuses, the treaty must integrate extraterritoriality obligations to ensure the state is obliged to oversee the activities of corporations from their country in whatever jurisdiction they operate in. African NGOs are convinced that the integration of extraterritorial obligations into the treaty will enable States to ensure transnational companies meet their obligations and provide enhanced access to remedies for affected people.

### ***Access to information***

A central concern in the design and operation of corporate projects is the dearth of information. Information transparency and dissemination is essential to effective decision making and promulgation of the kind of development that more aligns with the priorities of people most directly affected. Hence, access to information is a central requirement in the processes of monitoring the implementation of the treaty, as well as being a key requirement for ensuring the effective operation of both judicial and non-judicial systems of remedy when the treaty is not adhered to.

For all these reasons, a treaty must contain strong provisions to facilitate transparency in all the processes that impact on the human rights of those connected to corporate operations. Regarding project level operations, the treaty must oblige corporations to produce human rights and environmental impacts assessments in processes that mandate the inclusion of civil society and affected communities within every stage of the process or design, production, dissemination, implementation and review.

### ***Conflict-affected areas***

Many parts of Africa have in recent times emerged from conflict or are still in the process of addressing ongoing conflict, and so the treaty must

address this effectively in order to make a meaningful contribution to the lives of people affected by corporate-related human rights abuses in Africa.

The treaty must raise the ordinary standards of human rights protection and obligations regarding corporate operations in conflict-affected areas to ensure adequate protection and safeguards for any people affected, or potentially affected, by corporate operations, especially in situation of occupation, like the circumstances of Palestine, there must be a higher standard and obligations of corporate accountability and state responsibility particularly in the extractive industry. In this context, the treaty should consider prohibiting certain activities in certain conflict circumstances.

### ***Special protection for Human Rights Defenders***

African civil society organization are observing a new trend in which the collusion of Governments and corporations have heightened repressive responses to human rights defenders, especially those campaigning to protect human rights in the context of environment, land and natural resources, including at the intersection of the realization of women's human rights. African CSOs have witnessed how, under the influence of corporations, police, military and other security apparatus, as well as offices of the judiciary, are actively deployed to harass, intimidate, threaten, arrest and imprison human rights defenders in the region, including community members. In particular, the use of the offices of the judiciary is increasingly exercised to bring forward criminal charges brought against human rights defenders working to realise human rights in the context of corporate operations through the application of charges such as criminal trespass, kidnapping, criminal malevolence, theft of property, obstruction of justice, disorderly conduct, menacing, murder, sedition, economic sabotage, rape and terrorism.

Coupled with the pattern of states applying a tide of charges against human rights defenders working to realise human rights in the context of corporate operations, human rights defenders are all too often subjected to libelous media campaigns, surveillance, burglary of homes and offices, death threats, attempted assassinations as well as enforced disappearances and murder.

African CSOs propose that the treaty must provide for the legal recognition and protection of human rights defenders in ensuring that they can work in a safe, supportive environment and be free from attacks, reprisals and unreasonable legal restrictions.

### ***The role of National Institutions for Human Rights (NHRIs)***

The future treaty should more clearly define the roles of NHRIs in the circumstances of ensuring prevention and remediation of corporate related human rights abuses. For African CSOs, it is important that NHRIs, along with CSOs themselves, are actively involved in monitoring the implementation of, and compliance with, the treaty by Member States. The engagement of NHRIs in this way should facilitate greater protection against corporate related human rights abuses, while facilitating also greater access to information and remedy for affected people.

### ***The treaty negotiation process***

African civil society organisations are as experienced as any organisations in understanding first-hand the human rights abuses caused by corporate operations, as well as the multitude of challenges facing the effective operation of judicial and non-judicial systems of remedy and accountability. African civil society organisations, together with our colleagues in other regions, must be central to the process of designing and implementing the treaty if it is to be an effective instrument. In particular, we strongly urge those states leading the negotiation process to actively seek the inputs of African and other civil

society organisations with expertise in understanding the differentiated human rights abuses experienced from corporate operations by women, children, indigenous peoples, disabled people, migrants and other marginalized groups in society.

We look forward to remaining engaged in this process, and welcome the efforts of ESCR-Net, FIDH and others to build a process that facilitates active and on-going CSO engagement in the treaty making process.

Signed

- **Action Against Impunity for Human Rights (ACIDH), *Democratic Republic of the Congo***
- **Action de Chrétiens Activistes des Droits de l'Homme a Shabunda (ACADHOSHA), *Democratic Republic of the Congo***
- **African Resources Watch (Afrewatch), *Democratic Republic of the Congo***
- ***§ Alliance for rural Democracy (ARD)- Liberia***
- **Amadiba Crisis Committee (ACC), *S.A., South Africa***
- **Center for Applied Legal Studies (CALs), *South Africa***
- **Centre de Recherche sur L'environnement, la Démocratie et les Droits de L'homme (CREDDHO), *Democratic Republic of the Congo***
- **Centre du Commerce International pour le Développement (CECIDE), *Guinea-Conakry***
- **Chiadzwa Community Development Trust, *Zimbabwe***
- **Friends of Lake Turkana, *Kenya***

- **Green Advocates, *Liberia***
  - **Habi Center for Environmental Rights, *Egypt***
  - **Hakijamii, *Kenya***
  - **HakiMadini, *Tanzania***
  - **Kenya Human Rights Commission (KHRC)**
  - **Kenya Land Alliance, *Kenya***
  - **Lawyers for Human Rights, *South Africa***
  - **Le Mouvement Ivoirien des Droits Humains (MIDH), *Ivory Coast***
  - **Legal and Human Rights Centre, *Tanzania***
  - **Legal Resource Centre, *South Africa***
  - **Nairobi People Settlement Network (NPSN), *Kenya***
  - **Narasha Community Group, *Kenya***
  - **National Association of Professional Environmentalists (NAPE), *Uganda***
  - **Natural Justice, *Kenya***
  - **Natural Resources Alliance of Kenya (KeNRA), *Kenya***
- Natural Resources Women Platform- Liberia***
- **Network Movement for Justice and Development, *Sierra Leone***
  - **Ogiek People's Development Program, *Kenya***
  - **Pastoralist Development Network, *Kenya***
  - **Sierra Leone Network on the Right to Food (SiLNorf), *Sierra Leone***

▪ § DITSHWANELO - The Botswana Centre For Human Rights, Botswana

▪ The Movement for the Survival of the Ogoni People (MOSOP), *Nigeria*

▪ Turkana Peoples Organization (SACPONE), *Kenya*

▪ Workers Rights Watch, *Kenya*