

TREATY

INITIATIVE



Asia-Pacific CSO

Consultation on the Forthcoming UN Treaty on Human Rights & Business

| Meeting Report |

CHIANG MAI | THAILAND | 1-3 MAY 2015



ESCR-Net and FIDH – which together have a combined membership of close to 450 human rights



organizations and individual activists, in more than half the countries of the world – have been central to calls to strengthen the international legal framework and its implementation for more than a decade. This 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 that can effectively address corporate human rights abuses and ensure effective accountability and redress mechanisms are available.



APWLD is the region's leading network of feminist organisations and women, with 183 members representing groups of diverse women from 25 countries in the region. APWLD has been active for nearly 25 years.

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ABOUT THE TREATY INITIATIVE PROJECT

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 will hold 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 submitted to the UN Intergovernmental Working Group (IGWG) – a group of states with the mandate to elaborate a new binding treaty on business and human rights.

The project is also supporting the development of the global advocacy architecture required in each region to support a coordinated international push for the creation and adoption of an effective treaty.

These regional advocacy platforms, led by regional CSOs, will 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 will 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. Over the next two years and beyond, ESCR-Net will work to facilitate information exchange, solidarity and joint advocacy across regions, in close coordination with these regional platforms.

For more information, please visit www.escr-net.org/cawg/treatyinitiative.



ASIA-PACIFIC CIVIL SOCIETY REGIONAL CONSULTATION

I. International Context

In June 2014 the Human Rights Council approved Resolution 29/6 which established a new UN Open-Ended Intergovernmental Working Group (IGWG) to work on a 'legally binding instrument on transnational corporations and other businesses enterprises with respect to human rights'.

As per this resolution, the mandate of the IGWG is to:

- ◆ Elaborate an international legally binding instrument to regulate, in international human rights law, activities of transnational corporations and other enterprises;
- ◆ Hold sessions of the IGWG that host constructive deliberations on the content, scope, nature and form of the future international instrument, beginning in July 2015, in Geneva.

This Resolution responds to a statement issued in September 2013 by a group of countries from Latin America, Africa, the Middle East and Asia calling to address the increasing cases of human rights violations and abuses by corporations and the need to have a legally binding framework to regulate the activities of transnational corporations and provide appropriate protection and remedy to the victims of human rights abuses. States recognized that the Guiding Principles "was a first step, but without a legally binding instrument."

In November 2013, over 140 civil society organizations issued a joint statement calling for a legally binding instrument to address corporate human rights violations and to be established through an open-ended intergovernmental working group. This statement was eventually endorsed by civil society organizations in over 90 countries.

BRIEF HISTORY

Recent international developments in relation to the treaty build on decades of civil society pressure that started in the 1970s when the International Telephone and Telegraph Inc. (ITT) colluded with the CIA to overthrow Chilean President Allende. In an attempt to restrict power of corporations, a Commission on Transnational Corporations, and an affiliated Centre on Transnational Corporations was established in 1972 by the United Nations. The Commission created a Code of Conduct on Transnational Corporations (TNCs). However, once the text was finalized in 1990, States resisted the idea to formally endorse it.

In 1998, the Sub-Commission on the Promotion and Protection of Human Rights, a subordinate body of the then-Commission on Human Rights, established a working group to 'examine the effects of transnational corporations on human rights'. At the renewal of its mandate, the working group was requested to create norms for a monitoring mechanism that would apply sanctions to transnational corporations. In 2003, the Sub-Commission approved the norms established by the working group. The norms designed a 'non-voluntary' international system of regulation for corporate human rights violations, which was broadly supported by civil society, but opposed by the business sector and many states. In 2004, the Commission on Human Rights referred to the norms as having 'no legal standing', largely ending the second major attempt to pass an international system of binding rules to govern corporate human rights violations.

In 2005 U.N. Secretary-General, Kofi Annan appointed Professor John Ruggie (co-author of the voluntary 'UN Global Compact' in 2000) as the U.N. Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (SRSG). At the end of his first term the SRSG proposed a 'Respect, Protect, Remedy Framework' to the U.N. Human Rights Council, at their session in June 2008.

In June 2011, John Ruggie presented the Guiding Principles on Business and Human Rights to the Human Rights Council to operationalize the Framework presented in 2008. States did not oppose the Guiding Principles, even though they received strong criticism from civil society organisations that collectively stated that "the draft Guiding Principles is not a statement of the law. In some areas the draft of the Guiding Principles takes a more regressive approach towards the human rights obligations of States and the responsibilities of non-state actors than authoritative interpretations of international human rights law and current practices", and "risk undermining efforts to strengthen corporate responsibility and accountability for human rights".¹ Following the passage of the UN Guiding Principles and the creation of the UN Working Group on Business and Human Rights, some civil society organisations have worked to implement the UN Guiding Principles.

Most of these organizations, together with others in the wider corporate accountability sector, have also recognized the need to complement and eventually surpass the Guiding Principles with a binding set of international rules. In November 2013, CSOs attending the Inaugural ESCR-Net Peoples' Forum on Human Rights & Business called for the creation of a binding international instrument, and this statement subsequently garnered over one thousand signatories and sparked the creation of the Treaty Alliance with many other CSO partners to support the passage of a Human Rights Council resolution to establish a new intergovernmental working group with a mandate to develop a treaty to address corporate human rights violations. This resolution, UN HRC Resolution 26/9, was successfully passed in June 2014.

¹ *Joint Civil Society Statement on the draft Guiding Principles on Business and Human Rights* (January 2011). Available at: <https://www.escr-net.org/docs/i/1473602>

II. Asia-Pacific Regional Context

In this session, APWLD, along with other participants, provided a general overview of the significant corporate-related human rights violations in the region. They highlighted that in spite of the diverse socio-economic and cultural contexts in the region, a common finding is that corporations systematically influence government institutions. This has resulted in the prioritization of economic growth and privatization of public goods over people's well-being and human rights.

These conditions have deepened inequality and discrimination against vulnerable and excluded groups. Low-income workers, women, migrants and Indigenous Peoples are most likely to be negatively impacted by corporate human rights violations, and they systematically face obstacles in accessing remedy and accountability. Without provision of effective accountability mechanisms and the possibility for remedy and compensation for redress, affected people and communities are put at a severe disadvantage by governments and corporations in their pursuit for justice.

During the discussion on the regional context, CSOs stated that there is a lack of leadership from governments in the Asia-Pacific region to proactively address corporate abuses. In this sense, CSOs play a key role in working closely with people's movements and holding governments accountable when they ignore people's demands. Participants shared information on mechanisms available for seeking justice at regional and national levels. Their statements unfolded the failures of the justice system to hold accountable corporations to human rights violations.

At the regional level –There are no institutions available to address corporate violations of human rights. The Association of South East Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR) has produced a baseline study on Corporate Social Responsibility. The recommendations in the paper are very light, relying strongly on voluntary approaches without anything mandatory recommended.

At the national level –Corporations in this region do have strong systems to assert their power, particularly as a result of the widespread application of investment dispute settlement systems across bilateral and regional trade and investment systems. These systems provide the possibility for investors to sue governments for economic losses resulting from the passage of domestic legislation that would strengthen human rights and environmental protections.



- ◆ Over 4.2 billion people live in the Asia-Pacific region, more than 60% of the world's population.
- ◆ There are 40 countries that account more than half of the world trade.
- ◆ Of more than 6,800 languages in the world, 3,500 (51%) are spoken in the region.

Particularly at the national level, participants shared their frustration for the comparatively weak national legal human rights frameworks, which some argued results from a pervasive fear by governments that a strong human rights protection system would dissuade foreign investment from investing in their countries.

Despite the lack of effective justice, CSOs in the region have engaged some national institutions and laws in their pursuits to hold corporations accountable. In particular, groups have used **National Human Rights Institutions (NHRI)**. For example, following the urging of Thai civil society groups, the Thai NHRI has undertaken investigations into corporate-related human rights violations allegedly connected with Thai companies in Laos, Cambodia, Myanmar and other countries in the region. There are up to ten cases of alleged extraterritorial human rights impacts in connection with Thai business activities that the Thai National Human Rights Commission has investigated or is still looking into. In the Philippines, the NHRI has announced it will begin to draft a National Action Plan on Business and Human Rights to implement the UN Guiding Principles on Business and Human Rights, although it is reported that there is a widespread lack of political will for this in other areas of the of government.



III. Key Corporate-Related Human Rights Issues in Asia-Pacific

Civil Society Presentations

CSOs and community leaders made powerful statements outlining systemic patterns as well as emblematic cases of corporate-related human rights violations in the Asia-Pacific region. Participants mainly discussed three categories of human rights violations concerning displacement, labor rights and indigenous peoples. Presentations also focused on legal gaps and weak regulations communities face when seeking justice, in addition to the almost non-existent remedies at national, regional and global levels. A few successes in fighting corporate abuse were also highlighted.

1. DISPLACEMENT

The type of projects most commonly connected to large-scale displacement of populations are free trade zones, extractive industry projects such as coal power plants, hydroelectric dams and other industries such as tourism and agribusiness plantations.

Populations subjected to displacement generally suffer from many human rights violations, particularly those in relation to their livelihood and food security, which have resulted in child malnutrition in countries like Indonesia. Forced displacement also breaks up family units, resulting in dramatic changes in the status of women and children. Loss of land also generates cultural dislocation, in particular on Indigenous population. Furthermore, when communities organize to oppose investment projects they suffer government repression, intimidation, and often defamation as a strategy of retaliation against community leaders.

2. Labor Rights

Presentations highlighted the impact of corporations in Asia-Pacific region on workers' rights. In the last decades, governments have implemented labor and employment laws and policies that end up favoring corporations over workers. These laws and policies prevent workers from organizing and collective bargaining, creating exploitative working conditions manifest in low-wages jobs, lack of protections and benefits. Workers experience insecure and short-term contractual status, no or little social security, a dearth of health and safety measures within factories, lack of overtime pay and other extreme work conditions.

Participants underscored experiences of labor abuses in different industries, in particular in agriculture (i.e. palm oil, banana, tea, etc.) and fishing industries in countries like Malaysia and the Philippines, as well as the ship-breaking industry in Bangladesh.

Workers have been impacted by similar policies in Sri Lanka. For example, corporations have enforced policies that restrict workers from using of the bathroom during work hours. Participants also shared information on the impacts of agribusiness, including a palm oil factory and a banana plant in Malaysia, where workers are exposed to hazardous and banned pesticides such as paraquat, endosulfan and glyphosate, which pose a major health risk to skin and internal organs. Similar harmful practices were experienced by workers in a pineapple and banana plant run by a large North American pesticide and GMO seed company. Finally, the 2013 Rana Plaza building collapse in Bangladesh, which killed more than 1100 garment workers, is another clear example of the severe human rights impacts which result from corporate practices that ignore health and safety protections.

Gender discrimination also plays a fundamental role in the violation of women workers' rights. Women workers are more likely to experience sexual harassment, hostile work environments, and unfair contracts. Other affected groups are children, migrant workers, indigenous peoples and persons with disabilities.

3. INDIGENOUS PEOPLES

Indigenous people in the Asia-Pacific region are one of the groups most affected by corporate human rights violations and the associated flawed government policies. The presentation covered the reality in this region that indigenous people are particularly vulnerable to being denied an effective remedy because of widespread reluctance on the part of governments to recognize their rights and identity. Furthermore, in situations of displacement, often involving extractive, agricultural and energy projects, they are more likely to be disconnected from their culture and suffer severe impacts on their livelihoods, which are often dependent on their land and location. Indigenous people are frequently denied their rights to free, prior and informed consent (FPIC) and self-determination when companies seek to exploit their land and other natural resources.

LABOR ABUSES IN THE PHILIPPINES

- ◆ In 2008, the management of a Philippine heavy industry corporation began to harass elected union leaders and members by transferring them to the new company site in Mindanao, demoting them, down-grading their salaries and threatening to terminate their employment. When they began to fight for the rights of their workers they face violence and criminal charges.
- ◆ In 2011, workers were protesting about the labor conditions of a different company operating in a free trade zone. The company requested police intervention and the police began shooting a protesters, instantly killed a male worker and injuring many others. As a result the government accepted the resignation of the police officer at fault, but he was reappointed in a different role shortly after.

Procedurally, government land titling processes are often intentionally made to be slow, and information disclosure related to projects is purposefully delayed, lacking sufficient detail or provided in a form communities cannot understand. Indigenous leaders are often harassed and targeted by private and/or government security forces for asserting the rights of their people, and government protection is typically provided to companies rather than indigenous citizens. For example, in 2007, the Philippines government formed an Investment Defense Force (IDF) for the protection of the interests of foreign investment projects in the face of communities asserting their rights.

TESTIMONY OF AN EMBLEMATIC CASE OF CORPORATE-RELATED HUMAN RIGHTS VIOLATIONS FROM FOREIGN MINING OPERATIONS IN BOUGAINVILLE ISLAND, PAPUA NEW GUINEA *Helen Hanake, Leitana Nehan Women's Development Agency, PNG*

"In 1960s, mining companies started exploring landowners' properties for natural resources on Bougainville Island, in Papua New Guinea. Women landowners were not consulted about the mining project, and as a result, their voices were not heard. In 1975, the government began opening mining sites. In response to people's loss of confidence in the government's decision to begin mining, the government started influencing students in schools, convincing them that mining would empower Papua New Guinea with greater degrees of self-determination, as well as more recognition in the international community. In reality, though, mining resulted in pollution, displacement and conflict that led to the killing of approximately 20,000 people.



From 1989 to 2000, the people of Bougainville fought for their rights. The government and the mining companies refused to pay a hundred million dollars compensation to the communities. Young men in Papua New Guinea started forming guerrilla organizations to force the government to sit down and listen to the communities. In response, the government imposed a blockade on the island. In 1990, there were no airplanes or ships commuting to the island, while inside there were ongoing rapes and violence. Villages, schools and hospitals were shut down or burned, forcing people to make compromises or leave their homeland. At that time, I was a teacher and 7 months pregnant. There were no hospital, doctors or nurses. We had to flee, because, as an educated member in the community, I would be the first person targeted. My home was burnt down, and I had to give premature birth to my child in an abandoned site. Two mothers who were with me died. Soon after I fled, my mother's village was burnt, and I had to abandon my premature baby for adoption with my uncle because there was no way to feed her properly. Later, my uncle was executed by the revolutionary army right in front of his family. Giving birth in these circumstances convinced me to found a women's development agency because I do not want women to suffer the way I did.

My story illustrates how the environmental damages caused by the mining companies lead to these human rights violations. Our governments and the mining companies abandoned their responsibilities to protect our people. No freedom of speech or association was permitted and there was no access to transportation or public welfare. There were only extrajudicial killings and internally displaced people. Our government used force to fight civilians, left us with a militarized community, deprived young people of the opportunity of education, forced them into the army and just taught them violence.

The goal of affected people in Bougainville is to have the mining companies involved pay compensation to the communities and to raise government awareness of the displacement and human rights abuses from resource extraction, so that the mining companies will not return, nor get their licenses renewed. Environmental impact assessments need to be done, the government needs to consult with landowners. Independent legal experts need to scrutinize agreements between companies, governments and communities need to be restored. We need to build up our alliances as well.

We are also facing some obstacles: companies change management so they cannot be easily accessed. CSOs do not have enough funding for operational expenses. Even until now, people still lack access to their land close to the mine sites. We have tried local reconciliation and to call for governments and companies to apologize to all people. In addition to compensating for the exploitation of resources on people's lands, they also need to compensate women victims and other survivors for burnt houses, pollution and all other human rights violations."

Strategies used to seek remedy and accountability

Participants from CSOs detailed some different approaches they have taken to seeking remedy and accountability, including the use of domestic legal actions, engaging national human rights institutions (NHRIs), using international mechanisms and focusing on longer term strategies like capacity building.

1. DOMESTIC LEGAL ACTIONS

Efforts to hold corporations legally accountable in national courts are the most common actions taken by affected people in the Asia-Pacific region. Some groups have pursued the liability of subsidiary corporations, and other corporations in a supply chain, for failure to comply with international labor rights standards, in particular seeking compensation for harms resulting from failure to adhere to various ILO Conventions. It was acknowledged though that legal remedies pursued against subsidiary companies within a supply chain are the most challenging way to attempt prosecution of corporations.

They emphasized some legal strategies using special national legal systems. For example, some groups have attempted to use a '*Writ of Kalikasan*', which is a unique legal remedy that protects the right to a healthy environment under the Philippine constitution.

Another legal strategy has been attempted is the application of the '*Alien Torts Statute*' (ATS) which is a U.S. federal law that gives the federal courts jurisdiction to hear lawsuits filed by non-U.S. citizens for torts committed in violation of international law.

CSOs and affected communities have used other strategies including people tribunals, public hearings and fact-finding missions. These strategies have been used to raise awareness about the need to repeal harmful laws and put pressure on governments and companies to compensate indigenous people.

2. INTERNATIONAL MECHANISMS

CSOs have used a number of strategies engaging international human rights mechanisms. Some of the most effective have involved development bank accountability mechanisms. In Cambodia, for example, communities have undertaken holistic campaigns mixing political pressure with complaints before non-judicial grievance mechanisms to pressure development banks to provide effective remedies and compensation, as well as suspend projects that violate human rights.

3. SOCIAL AND POLITICAL REMEDIES

Other strategies to achieve remedies have involved pressuring governments and sensitizing the general public to the corporate-related human rights violations. One successful example of this approach related to the ban of

hazardous pesticides like paraquat after a number of public campaigns. One associated strategy is the high-profile assertion by indigenous peoples of their self-determined visions of alternative development, which are then applied in advocacy and pressure actions when corporations propose development projects. On occasion, the customary laws and justice systems of indigenous communities have been recognized as the appropriate systems to address corporate harms to indigenous communities and environment. Similar types of popular community assemblies have also been used to provide means for communities to examine and elevate awareness of corporate-related human rights impacts affecting their human rights.

4. CAPACITY BUILDING

Capacity building has been one of the most effective strategies used by CSOs to strengthen communities and organizations fighting corporate human rights abuses. These activities include sharing capacity to organize, lobby, access legal aid, approach accountability mechanisms and design social media campaigns.



Challenges common to CSOs in the Asia Pacific Region

The consultation facilitated exchange of experiences on how to address challenges such as legal barriers, impunity and conflict of interests posed by actions of powerful corporations. This session helped identify existing legal gaps and discuss feasible actions with the objective of developing content proposals guided by the Legal Group.

Some of the challenges shared by the participants were the following:

1. LEGAL BARRIERS

Lack of access to justice is deeply connected to inequalities including discrimination and poverty. The consultation raised the following obstacles that communities face to access an effective legal remedy include:

- ◆ Legal processes that provide no remedy while the project continues unabated in the absence of interim measures
- ◆ Lack of access to relevant project information and ability to access evidence or sufficient documentation
- ◆ Lack of information about how to access the court system; lack of adequate or affordable legal representation; lack of awareness of the available legal options
- ◆ Language barriers, particularly for indigenous peoples
- ◆ Culturally inadequate court procedures, also particularly relevant for indigenous peoples
- ◆ Lack of protection for witnesses, legal advocates and complainants

2. EVASIVE CORPORATE STRUCTURE

Beyond the procedural obstacles highlighted in some cases during the consultation, communities found that the 'corporate veil' and features of corporate structures posed legal difficulties in linking the activities of subsidiaries with the parent companies.

3. FINANCIAL INSTITUTIONS

Some civil society groups raised the challenge that international financial institutions pose to the national law and policies of countries that borrow from these institutions, such that the loans come with conditionalities that require governments to liberalize their economies and social services, opening them to privatization and foreign investment that undermine human rights. Furthermore, the international investment system undermines the ability of national governments to improve their human rights and environmental regulatory systems, due to the threat of cases before investor-state dispute resolution mechanisms incorporated into investment treaties.

4. LACK OF DISCLOSURE POLICIES AND ACCESS TO INFORMATION

CSOs in the consultation raised the challenges posed to accountability and remedy posed by a dearth of contract transparency or even adequate access to information about available company complaint mechanisms.

5. CONFLICTS OF INTEREST

Some groups present in the consultation stressed the conflict of interests that erode government capacity and willingness to respect, protect and fulfil human rights. In particular, many governments pursue growth and development strategies dependent on foreign investment. These approaches to development lead to the proliferation of export processing zones and other investment policies that undermine the realization of human rights. On a more localized level, some groups highlighted the challenge to securing accountability when politicians approving investments are themselves investors in the projects or stand to benefit financially in other ways. The lack of disclosure of beneficiaries can severely restrict access to adequate information and accountability.

6. MILITARIZATION AND INTIMIDATION

Many participants from different countries emphasized the growth of militarization and intimidation used by companies and governments to disrupt community organizing. As noted above, in the Philippines, the government established an Investment Defense Force in 2007, to protect the interests of foreign investment projects which have come into conflict with communities asserting their human rights in the face of development projects. In many other places, state security services typically suppress and intimidate community members at the behest of corporations when they assert their human rights.

Examples of Successful Strategies

There have been some successes in achieving justice for corporate human rights violations in the region. Most of the cases are legal actions that suspend the operations of corporations and are reactive in nature, so they cannot directly prevent these abuses from occurring again.

- 1. SRI LANKA** – Five activists were shot by police while protesting for the contamination of water by a multinational rubber company. A class action was filed against the company involving 1500 people at the High Court of Sri Lanka. After a year, the High Court ordered to halt of the project in 2013.
- 2. INDIA** – An agricultural product called Endosulfan, produced a German multinational, had been sprayed aerially over agricultural plantations for decades, including in Kasaragod, India, for 22 years, where it caused severe health and environmental impacts. As a result of extensive research, documentation and investigation on the health and environmental impacts in India and elsewhere, an international campaign finally lead to a worldwide ban and phasing out of Endosulfan.
- 3. BANGLADESH** – A state run and owned extractive corporation in Bangladesh entered into a contract with a Canadian oil exploration company. There were two explosions in the exploration process due to negligence the Canadian company, which caused significant environmental damage. Bangladesh demanded compensation and the company refused. A human rights organization filed a public interest litigation suit in the High Court of Bangladesh. The High Court issued an injunction against further payments from the government to the Canadian company, who has subsequently filed a complaint at the International Centre for Settlement of Investment Dispute (ICSID). ICSID has barred the company from selling its property in Bangladesh while the case is pending.

IV. LEGAL GROUP SESSIONS

Eight of the twelve members of the Legal Group (LG) attended the Asia-Pacific regional consultation in Chiang Mai consultation. The LG refers to the group of international legal advocates and academics from the field of corporate accountability, who have been selected on the basis of the relevance of their specific legal expertise, and in an attempt to form a geographically and gender-balanced group.

Members of the LG's include academics and university professors, jurists and advocates in leading human rights and environmental organizations, and legal practitioners with experience in representing affected communities and indigenous groups by corporate human rights abuse.

This regional consultation was the first time members of the LG gathered in person. It provided an opportunity for LG members to clarify the role and function of the LG within the Treaty Initiative project, agree on a working methodology, and define desired outputs and related timeline.

ROLE OF THE LEGAL GROUP

The role of the LG is to understand the challenges facing affected communities and CSOs in holding corporations accountable. In turn, the LG will offer insights, ideas and options for how the treaty may be able to address the issues and desired approaches raised by communities and CSOs. Following these interactions, LG members will develop content proposals for the treaty, reflecting inputs from different regions, for further input and ultimately advocacy.

During the LG session on the first day of the consultation, members reaffirmed that their approach was not to represent the views of CSOs. Rather, there was an appreciation for how the LG is best suited to support CSOs to design their own advocacy positions on the treaty, providing legal insight and offering options based on their legal knowledge and experience. As such, LG members agreed that they would play an advisory role, producing material and proposals that activists in different regions can decide to use to support their own advocacy and campaigning activities.

OUTCOMES OF THE MEETING FOR THE LEGAL GROUP

The meeting provided LG members with the opportunity to share experiences and exchange perspectives face-to-face. An initial discussion about the broad gaps that a treaty on business and human rights might address formed a baseline of general categories of issues for potential research and debate.

Members of the Legal Group (LG) Present in Thailand:

- ◆ **Beth Stephens**, Rutgers University
- ◆ **David Bilchitz**, University of Johannesburg
- ◆ **Eduardo Toledo**, Unión de Afectados y Afectadas por las operaciones de la petrolera Texaco
- ◆ **James Tager**, on behalf of Carlos Lopez, International Commission of Jurists
- ◆ **Justine Nolan**, University of New South Wales
- ◆ **Nicola Jägers**, Tilburg University
- ◆ **Surya Deva**, City University of Hong Kong
- ◆ **William David**, Assembly of First Nations

The other members of the LG not present in Thailand are:

- ◆ **Colin Gonsalves**, Human Rights Law Network
- ◆ **Desislava Stoitchkova**, The British Academy
- ◆ **Marcos Orellana**, Center for International and Environmental Law
- ◆ **Olivier De Schutter**, Université Catholique de Louvain
- ◆ **Robert McCorquodale**, University of Nottingham

CSO presentations on Day Two, followed by the question and answer sessions after each presentation, began to illuminate whether or not the baseline issues raised by the LG the day before were relevant for the CSOs in facing challenges of holding corporations accountable and seeking effective remedy. Upon hearing CSO experiences and preferred approaches to the treaty, it became evident that some issues did overlap around gaps and limitations initially identified in the current international human rights system. The initial set of overlapping issues formed what has become known as 'Building Blocks', which will guide the development of content proposals discussed below.

The consultation allowed for rich exchanges between LG members and CSOs groups, both in formal plenary settings and informal bilateral discussions. There was a strong desire by the LG to next time to continue the format from this consultation while also ensuring more time for unstructured dialogue with CSOs and means for CSOs to provide written inputs to the consultations.

NEXT STEPS

The Building Blocks are made up of two documents, a Brief and more refined Proposals. The objective of the Brief is to outline options for how elements of the treaty could be designed to address the human rights violations and legal gaps CSOs have identified during the consultation. The Proposals will further refine the inputs provided in consultations into more specific suggestions for treaty text. As such, there will be two stages in the process of forming each Building Block:

1. Production of a short **Brief** summarizing the key legal issues arising in relation to this issue area, and an outline of different options for how the design of the treaty might address these issues. These will be used as context material for facilitating online and in-person consultations, eliciting input from CSOs in all regions.
2. The latter stage of the process will involve the refinement of the brief, beyond a general suite of options, into more detailed and in-depth **Proposals** containing more direct outlining of how the treaty might be constructed, relying on legal research and citation, all the while grounded in the direction provided by the CSO consultations. The Proposals themselves will also be subject to further consultations.

Briefs, and ultimately the Proposals that are founded on them, will be developed in light of the following considerations:

1. What is the challenge on the ground, based on the experiences of CSOs?
2. What is the current state of (international) law in this area, based on LG members experiences and the insights of CSOs practicing in the law in national and international mechanisms?
3. What are the options for developing international law in order to address the challenge posed by the everyday reality and the gap in the legal system, based on the knowledge of LG members, as well as CSOs experiences and expressed preferences for how the treaty should be designed?

Once a LG member has developed an advanced draft of the Brief, other LG member will be able to comment, before wider circulation to CSOs for their review. After further stages of consultation, the LG will begin to further evolve the Building Blocks into more refined Proposals for review by CSOs, as well as a Review Committee made up of other legal advocates and academics.

Both the Briefs and Proposals will be designed to support CSOs everywhere to design their own advocacy positions, and hopefully will be used as supporting materials in advocacy activities by CSOs in all regions and internationally. As such Building Blocks are not intended to represent the final legal proposals in the framework

of the Treaty Initiative project. Both the Briefs and Proposals should form a means to facilitate broad dialogue with CSOs and affected communities, on the way to supporting CSOs advocacy positions (drawing on the materials generated through the Building Block development process), and ultimately a treaty that supports the preferences of CSOs.

The current draft list of Briefs to developed in the wake of the Thailand consultations, and subject to all further consultations, are:



1. Access to effective remedy
2. Complicity
3. Corporate groups and broad scope of treaty
4. Direct liability of corporations
5. Due diligence in context of corporate obligations/duties
6. Enhancing rights of participation
7. Extraterritorial obligations
8. Liability in a corporate group
9. Rights of indigenous peoples

The Legal Group temporarily reserved the idea of trying to form the final Building Block Proposals into one consistent proposal for the full treaty content. This option will be reviewed at a later stage in the Treaty Initiative Project. The next stages in the consultation process will be online discussions between CSOs and LG members around some of the themes of the Building Blocks, in the lead up to the Africa Regional CSO Consultation in October 2015, and then Latin America Regional CSO Consultation in the early part of 2016.

V. ADVOCACY OUTCOMES

CIVIL SOCIETY FINAL STATEMENT

At the end of the consultation, CSOs present developed a list of key issues which form the foundation of a Unity Statement emanating from the consultation. The Unity Statement (included below in Annex I) is a call for a treaty centered on the needs of people and communities affected by corporate human rights abuses and will form the basis of advocacy messaging for the groups in the region.

ASIA-PACIFIC TREATY INITIATIVE

Following the consultation, the groups present decided to form a regional platform to coordinate treaty related advocacy initiatives. This group began to take form in the weeks following the event, coordinating the finalization of the Unity Statement and participation in ongoing consultations between civil society and members of the Legal Group in the process of developing strong legal proposals to submit to the UN Intergovernmental Working Group.

At the first UN Intergovernmental Working Group meeting in July 2015, in Geneva, ESCR-Net and FIDH arranged a side session for members of the Asia-Pacific Treaty Initiative (APTI) to deliver the points made in their Unity Statement. Each of the three members of the APTI present justified the points of the Unity Statement by drawing links to the experiences they've faced seeking remedy and accountability in their countries and communities. ESCR-Net and FIDH also facilitated the presence of State representatives, members of the LG and other CSOs, so in the second part of the session, APTI members could pose questions to these groups.

In addition, ESCR-Net and FIDH facilitated a close-door session between representatives of nine CSOs, including APTI members, and seven states, most from the Asia-Pacific region. The session allowed States to be more forthcoming in their perspectives towards the treaty development process and answer direct questions from CSOs about how they might go about including some of their priorities.

As the advocacy related to the treaty evolves, there will be opportunities for the APTI to coordinate and engage in mutually reinforcing global, regional and national advocacy efforts, including identifying ways to elevate awareness of the experiences of people affected by corporate-related human rights violations. As the Treaty Initiative begins focusing on other regions, it is expected that other regional treaty initiatives will form, and the potential for cross-regional advocacy interactions will increase. As such, an important additional intention of the Treaty Initiative project is to build a well-coordinated and long-term advocacy architecture, ensuring civil society in all regions has a strong presence in the process of forming the forthcoming treaty to address corporate human rights abuses.

Annex I – Unity Statement of Asia Pacific Civil Society in relation to the treaty

UNITY STATEMENT: ASIA PACIFIC CIVIL SOCIETY'S DEMANDS FOR THE LEGALLY BINDING TREATY ON BUSINESS AND HUMAN RIGHTS

We, the undersigned members of Asia Pacific civil society, representing different constituencies, movements and organisations, recognize, experience, and resist the human rights violations committed by transnational corporations (TNCs) and other business entities.

We strongly protest the impact of direct and indirect violations by TNCs and other business entities, which destroy lives, cultures, livelihoods, the environment, and profoundly affect women, children, peasants, workers, and Indigenous Peoples.

We welcome UN Human Rights Council Resolution 26/9,² which mandates an intergovernmental working group to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

We collectively unite to demand corporate accountability for human rights violations and to redress the grave imbalance between corporate power and the power of people.

We strongly demand that our governments protect, respect and fulfil human rights and commit to enact effective laws for corporate accountability. We encourage all governments to actively participate in the development of a legally binding treaty on business and human rights in the UN Human Rights Council.

As peoples and CSOs, we demand an end to the human rights violations perpetrated with impunity by TNCs and other business entities, often with the complicity or inaction of States.

We make the following demands for a legally binding treaty:

- ◆ The adoption of an expansive definition of transnational corporations which encompasses parent companies, subsidiaries and contractors and ensures comprehensive supply chain accountability.
- ◆ No corporate participation in the process of elaborating and adopting the treaty. The private sector has actively resisted legal accountability for the impact of its actions and this treaty must be formulated with the priorities and interests of affected individuals, communities, peoples, and women and men at its heart;
- ◆ The inclusion of a provision that explicitly prohibits corporate capture of political processes, including collusion and complicity between governments and corporate actors.

At a minimum, this should take the form of a requirement that there is no conflict of interest in government approval of corporate sector projects:

² UN Human Rights Council, Resolution 26/9, *Elaboration of an internationally legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, A/HRC/26/L.22/Rev.1, 26, June 2014.

- ◆ The inclusion of a provision requiring transparency and financial disclosure from transnational corporations that should be made available to the public consistent with the public right to access information regarding private operations that have public impact, including for projects financed by international financial institutions;
- ◆ An end to impunity for the human rights violations caused by transnational corporations, including but not limited to providing for criminal liability for corporations, their employees, and governments and public officials complicit in the unlawful activity of transnational corporations;
- ◆ Accountability for the direct, indirect, short-term and long-term impacts of corporate activity, including remote, “down-stream”, or cumulative negative impacts;
- ◆ Affirmation of the primacy of governments’ human rights obligations under the UN Charter and international treaties and customary laws over obligations in trade and investment agreements.
- ◆ A rejection of coercive enforcement mechanisms under trade and investment agreements which are incompatible with the human rights obligations of governments, including Investor-State Dispute Settlement.
- ◆ Provisions should be progressive and ensure no regression from existing international human rights standards, including core ILO Conventions and the Convention on the Elimination of All Forms of Discrimination Against Women, which recognizes the entitlement of women to substantive equality with men;
- ◆ The inclusion of provisions recognizing the right of Indigenous Peoples to free, prior, and informed consent (FPIC) as a corollary of their internationally-recognized right to self-determination; for non-Indigenous Peoples, consent must be secured through a direct and participatory process of consultation that respects the right to participation.
- ◆ An explicit prohibition of government or corporate retaliation against human rights defenders, including through the suppression of protests, surveillance, and other forms of intimidation and harm.
- ◆ An explicit prohibition of the use of State security, military or paramilitary forces to secure corporate projects.
- ◆ The establishment of an international tribunal or mechanism to receive, investigate and adjudicate complaints of human rights violations committed by TNCs. The decisions of this mechanism should be based on the obligations of governments and businesses in relation to international human rights standards and gender equality and should be legally binding.

Annex II – Participants at the Asia Pacific CSO Regional Consultation

Civil society representatives present

Abantee Nurul, *Ain-o-Salish Kendra (ASK)*, Bangladesh
Adam Ahmed, *FORUM-ASIA*, Thailand
Ame Trandem, *International Rivers*, Thailand
Andrew Moiseff, *Earth Rights International*
April Alconis, *IBON International*, Philippines
Bobby Ramakant, *Citizens News Network / National Alliance of People's Movements*, India
Daisy Arago, *Center for Trade Union and Human Rights (CTUHR)*, Philippines
Edgardo Cabalitan, *Alyansa Tigil Mina*, Philippines
Gari Lazaro, *Social Movements for an Alternative Asia*, Philippines
Geetha Fernando, *Sri Lankan National Fisheries Solidarity Movement (NAFSO)*, Sri Lanka
Helen Hakena, *Leitana Nehan Women's Development Agency (LNWDA)*, Papua New Guinea
Jade Tessa, *Asia Indigenous People's Pact (AIPP)*, Thailand
Jennifer Corpuz, *Tebtebba*, Philippines
Kiri Dalena, *Alliance for the Advancement of People's Rights (Karapatan)*, Philippines
Kyasingmong Marma, *Asia Indigenous People's Pact (AIPP)*, Thailand
Leanne Sajor, *Asia Pacific Forum on Women, Law and Development*
Maureen Harris, *Earth Rights International*
Ny Chakrya, *The Cambodian Human Rights and Development Association (ADHOC)*, Cambodia
Paulina Rusu, *Solidaritus Perempuan*, Indonesia
Pauline Schaal, *Earth Rights International*
Pranika Koyu, *Asia Indigenous People's Pact (AIPP)*, Thailand
Meitry Tambingsila, *Protection International*, Thailand
Prashant Singh, *Community Resource Centre (CRC)*, Thailand
Rachmi Hertantia, *Indonesia for Global Justice*, Indonesia
Rolando Recto, *Tanggol-Kalikasan*, Philippines
Rosemarie R. Trajano, *Philippine Alliance of Human Rights Advocates (PAHRA)*, Philippines
Sarojini Rengam, *Pesticide Action Network Asia and the Pacific (PAN AP)*, Malaysia
Sary Bothchakrya, *Community Legal Education Center (CLEC)*, Cambodia
Shakun Devi, *Pesticide Action Network Asia and the Pacific (PAN AP)*, Malaysia
Sor Ratanamane Polkla, *Community Resource Centre (CRC)*, Thailand
Su Su Swe, *Women's League of Burm (WLB)*, Myanmar
Urantulkuur Mandkhaitseten, *Center for Human Rights and Development (CHRD)*, Mongolia
Wong Aung, *Shwe Gas Movement*, Myanmar

Legal group members present

Beth Stephens, *Rutgers University*
David Bilchitz, *University of Johannesburg*
Eduardo Bernabé Toledo, *Unión de Afectados y Afectadas por las operaciones de la petrolera Texaco*
James Tager, *International Commission of Jurists*
Justine Nolan,
Nicola Jägers, *Tilburg University*
Surya Deva, *City University of Hong Kong*
William David, *Assembly of First Nations*