



International Network for Economic,
Social and Cultural Rights (ESCR-Net)
Corporate Accountability Working Group

**Corporate Accountability Working Group (CAWG) of the International Network for Economic,
Social and Cultural Rights (ESCR-Net)**

**Submission to the United Nations' Open-ended
Intergovernmental Working Group on Transnational
Corporations and Other Business Enterprises with
Respect to Human Rights**

Third session of the IGWG at the Human Rights Council, 23-27 October 2017

Introduction

We, the undersigned members of the Corporate Accountability Working Group (CAWG) of the International Network for Economic, Social and Cultural Rights (ESCR-Net), welcome the release of the 'Elements for a draft legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (Draft Elements) and the continued efforts of the United Nations' Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (IGWG) to address the significant accountability gaps with regard to corporate-related human rights abuses.

We reiterate our support to the IGWG in developing a legally binding instrument on transnational corporations and other business enterprises (TNC-OBE) with respect to human rights, that is reflective of current global conditions and the lived experiences of individuals and communities around the world. To that end, we jointly call upon the IGWG to consider and address the issues outlined in this submission, during the review and further development of the treaty.

This submission reflects collective analysis and recommendations emerging from: CAWG's 2015-2016 [worldwide consultation](#) with over 150 civil society organizations (CSOs), including in-person consultations with our members and partners in Asia-Pacific, Africa and Latin America, and online consultations with CSOs from all regions; the CAWG 2016 [collective submission](#) to the IGWG; and recent consultations with members following review of the Elements. ESCR-Net is also actively engaged in the global [Treaty Alliance](#), and supports the collective Alliance statements. However, we note that due to the time constraints and the late release of a version of the Draft Elements in languages other than English, many of our members were not able to react and send inputs to this collective submission, which regrettably impaired their full participation.

Contents

This submission covers the following key topics:

Topic	Page
1. Preventing corporate capture	4
2. TNC-OBE accountability informed by the leadership and lived experiences of women	6
3. Protecting human rights defenders and ensuring enabling environments for human rights activity	9
4. Additional Issues	12
4.1 <i>The primacy of human rights</i>	12
4.2 <i>The scope of the treaty</i>	12
4.3 <i>The framework requirements for ensuring access to information and participation</i>	13
4.4 <i>States' extraterritorial obligations</i>	13
4.5 <i>Impacts of TNC-OBE activity on indigenous peoples</i>	14
4.6 <i>The effective oversight of TNC-OBE activities in conflict and post-conflict situations</i>	14

1. PREVENTING CORPORATE CAPTURE

1.1. CONTEXT

The treaty provides an important opportunity to address the ways that TNC-OBEs unduly influence government or public institution policy formation, decision-making and regulatory oversight, in order to promote their interests over human rights and environmental standards and protections.

1.2. KEY RECOMMENDATIONS

We recommend that states:

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

- **Community Manipulation:** TNC-OBEs 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:** TNC-OBEs 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:** TNC-OBEs use opaque lobbying practices, provide campaign donations and other rewards, and threaten or pressure legislators and policymakers to influence public decision-making.
- **Privatisation of Public Security Services:** TNC-OBEs 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 TNC-OBE 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 TNC-OBEs 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, TNC-OBEs 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 standards and protections

States must establish effective legislative, policy and enforcement mechanisms to limit TNC-OBE 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 TNC-OBEs; requirements that diplomatic staff comply with state human rights obligations; obligations that TNC-OBEs and state actors 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 TNC-OBEs; and prohibitions on the use of state police, armed forces and other public security services by TNC-OBEs. States must take measures to ensure that the treaty negotiations are not captured by TNC-OBEs.

1.3. REVIEW OF THE ELEMENTS

The Draft Elements do not explicitly reference the issue of corporate capture or conflict of interest. We recommend that a guiding statement be included in ‘Principles’ recognising the primacy of human rights obligations as a foundation for governmental and public institution decision-making, and a specific clause or clauses be included in ‘Obligations of States’ in line with the recommendations in 1.2(3) above. Further, states are encouraged to review the entirety of the Draft Elements to consider where state action in relation to the different components of corporate capture (as outlined above under 1.2(1)) can be strengthened.

Failing to address this issue explicitly will facilitate the continued prioritisation of corporate pecuniary interests over human rights and environmental standards and protections. More broadly, ongoing corporate capture practices give rise to democratic crises; as the decision-making role and space of the state is restricted due to corporate capture, the ability of states to respond to the needs of the electorate and the associated ability of individuals and communities to act with self-determination or change the course of their lives via the government also contracts, leading to disempowerment, disenfranchisement and instability.

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.

2. TNC-OBE ACCOUNTABILITY INFORMED BY THE LEADERSHIP AND LIVED EXPERIENCES OF WOMEN

2.1. CONTEXT

The treaty provides an important opportunity to understand and address the ways in which TNC-OBE activities perpetuate widespread discrimination against women in workplaces, contribute to unstable and vulnerable working conditions, and give rise to gender-specific and disproportionate human rights and environmental abuses. To guarantee effective TNC-OBE accountability in all regions, the leadership and lived experiences of women must be recognised as an integral and equal component in the creation of human rights-based institutions, mechanisms, legislation, policies and practices related to TNC-OBE activities.

2.2. KEY RECOMMENDATIONS

We recommend that states:

(1) In all action related to women and TNC-OBE accountability, recognise and take appropriate measures to address the particular impacts experienced by marginalised women, and women affected by multiple or intersectional forms of discrimination.

(2) Address the widespread forms of discrimination against women in workplaces

- In all regions, women face extensive discrimination within work environments, which in turn contributes to the entrenchment of gender inequalities linked to access to resources within the household, broader social and economic agency within society, and the ability to enjoy an adequate standard of living throughout all stages of life including old age. States must immediately eliminate all forms of direct and indirect discrimination against women in all workplaces, in accordance with the international human rights framework set out by CEDAW, ICESCR, and relevant ILO conventions. Among other things, this should include measures to achieve the full and equal realisation of:
 - The right to work (including relevant education and training, and an enabling environment for women to engage in full and productive employment and to progress in such employment)
 - The right to just and favourable conditions of work (including equal pay for equal work, equal pay for work of equal value, and safe and healthy working conditions with focus on the prevention of sexual harassment and gender-based violence)
- States must take appropriate measures to ensure the **substantive equality** of women in workplaces, including through steps to: **redress disadvantage** (based on historical and current social structures and power relations that define and influence women's abilities to enjoy their human rights); **address stereotypes, stigma, prejudice, and violence** (with underlying change in the ways in which women are regarded and regard themselves, and are treated by others); **transform institutional structures and practices** (which are often

male-oriented and ignorant or dismissive of women's experiences); and **facilitate social inclusion and political participation** (in all formal and informal decision-making processes).²

(3) Ensure the full legal recognition, with associated benefits and protections, of all forms of work undertaken by women

- In all regions, women are disproportionately represented in informal and unpaid forms of work, which are associated with less safe labour conditions, lower or inconsistent or no wages, shorter-term or no formal employment status, irregular or long work hours, and increased vulnerability to harassment, physical abuse, and sexual violence in the workplace and/or traveling to and from work, especially in conflict and post-conflict environments.
- States must ensure full legal recognition for all forms of work undertaken by women, with associated enjoyment of work-related human rights and full labour benefits and protections, with a particular focus on agroindustry, garment manufacturing and associated supply chains, and industries focused on exploiting natural resources such as large-scale energy, forestry and mining.

(4) Investigate and address the different and disproportionate impacts of TNC-OBE human rights abuses on women and girls

- The human rights and environmental impacts of TNC-OBE activities that result in land confiscation, displacement, or environmental damage are often gender-specific and disproportionately experienced by women and girls, particularly indigenous women and small farmers (a majority of whom are women). In many communities, socially constructed gender roles mean that women and girls are responsible for securing access to water and other basic needs, bear a disproportionate responsibility for care of children and other family members, and are more likely to experience a greater loss of livelihood and social status in the case of loss of access to land, forests and other forms of natural resources. Further, such TNC-OBE activities and/or the use of security forces by TNC-OBEs often go hand in hand with increasing vulnerability of women to violence, forced labour and trafficking. TNC-OBEs that attempt to engage with communities about development projects tend to meet with mostly or only men, such as with male village elders or perceived heads of households.
- Among other measures, states must:
 - Create an enabling environment for the full, active and equal participation and leadership of women in the development of legislation, policy, practice and decision-making related to TNC-OBE accountability.
 - Establish national legislation requiring mandatory (1) gender impact assessments, (2) environmental impact assessments incorporating a gender analysis, and (3) ongoing human rights due diligence incorporating a gender analysis. Each process must involve consent of the affected communities, be undertaken by an independent consultant chosen by or agreed upon by the community, and ensure the full, active and equal participation of women in consultation, decision-making and remedial processes.

² For more information on this framework, see Sandra Fredman and Beth Goldblatt *Gender Equality and Human Rights* (2015) UN Women Discussion Paper No. 4, <http://www.unwomen.org/en/digital-library/publications/2015/7/dps-gender-equality-and-human-rights>.

- Ensure women’s right to effective remedy for TNC-OBE-related human rights violations or abuses (whether in workplaces or due to TNC-OBE operations). Among other things, states should identify and address gender-specific obstacles to accessing remedial mechanisms, pay particular attention to women subjected to gender-based violence, and ensure remedies address both specific violations and the underlying systemic or structural issues that lead to such violations.
- Develop and apply enhanced protection mechanisms for women human rights defenders, including regarding gender-specific violence and gender-specific risks.

2.3. REVIEW OF THE ELEMENTS

The Draft Elements reference women as a group needing ‘special protection’ (see ‘Principles’) and in relation to special consideration in connection with access to justice and effective remedies (see ‘Access to justice, effective remedy and guarantees of non-repetition’). While we welcome the explicit references to women, we recommend that states adopt a broader gender-responsive approach to TNC-OBE accountability in order to develop a treaty that is responsive to current global conditions and the lived experiences of women around the world.

We recommend that gender considerations be central not only to a remedial response to adverse TNC-OBE activity that occurs, but also to the development of relevant policy and legislation to prevent such impacts in the first place. In this regard, states can find useful guidance in taking a substantive equality approach to TNC-OBE accountability in practice (as outlined above under 2.2(2)), through careful consideration of the following dimensions as they relate to women’s experiences regarding TNC-OBE activity and the multiple and intersecting forms of discrimination that different groups of women face: redressing disadvantage; addressing stereotypes, stigma, prejudice, and violence; transforming institutional structures and practices; and facilitating social inclusion and political participation.

3. PROTECTING HUMAN RIGHTS DEFENDERS AND ENSURING ENABLING ENVIRONMENTS FOR HUMAN RIGHTS ACTIVITY

3.1. CONTEXT

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 TNC-OBE activity and development projects.

3.2. KEY RECOMMENDATIONS

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 TNC-OBE 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 TNC-OBE 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 TNC-OBE accountability, whether perpetrated by states, TNC-OBEs 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 TNC-OBE 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 TNC-OBE 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 TNC-OBE 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 TNC-OBE 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 TNC-OBE 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 TNC-OBE-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 TNC-OBE 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 TNC-OBE 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 TNC-OBE activity that could affect their rights.

3.3. REVIEW OF THE ELEMENTS

We welcome the fact that the Draft Elements include reference to HRDs explicitly (see ‘Access to justice, effective remedy and guarantees of non-repetition’). However, the work of HRDs is essential to guarantee the enjoyment of the rights being defended and also the advancement of the struggle that rights-holders are pushing forward. As reiterated by the UN Committee on Economic, Social and Cultural Rights in General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities “States Parties should take all necessary measures to protect human rights advocates and their work. They

should refrain from resorting to criminal prosecution to hinder their work, or from otherwise obstructing their work”³.

The Draft Elements do not cover explicitly the need for regulation and policy measures to address the threats and attacks that HRDs working in the field of business and human rights face, or the state obligation to create an enabling environment for their essential work. It lacks provisions on reprisals and on the importance of states refraining from, and preventing limitation or restrictions of, spaces in which people can meet and assembly, demonstrate and protest and engage in decision making due to TNC-OBE activities. States must guarantee the freedom of expression, association and assembly and maintain its obligation to protect people from torture, cruel, inhumane or degrading treatment. States must protect HRDs from all these forms of attacks and refrain from criminalising the legitimate work of HRDs via drafting or applying restrictive or vague laws, such as those relating to national security, counter-terrorism and defamation to inhibit the work of HRDs.

In regard to the obligations of states to respect, protect and fulfil the rights of all HRDs in connection with TNC-OBE activity, we recommend that a provision in the Preamble of the Draft Elements to reaffirm and make reference to, at a minimum, the UN Declaration on Human Rights Defenders⁴ and the UN Resolution on the protection of women human rights defenders.⁵

³ UN Committee on Economic, Social and Cultural rights on General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and cultural Rights in the Context of Business Activities. E/C.12/GC/24. Para.48.

⁴ A/RES/53/144.

⁵ A/RES/68/181.

4. ADDITIONAL ISSUES

In addition to the points elaborated above, the 2016 [collective submission](#) by the Corporate Accountability Working Group to the IGWG recommended that, in order to reflect the realities of current TNC-OBE operations and their impact globally, the treaty should:

- **reaffirm the primacy of human rights obligations**
- **cover all human rights** and be **applicable to all TNC-OBE, but primarily address the activities of TNCs**
- outline the framework requirements for **operationalising the legal responsibilities of TNC-OBE to respect human rights** and for ensuring **access to information and participation**
- affirm states' **extraterritorial obligations**
- address legal and practical obstacles to redress through framework requirements regarding **access to justice**
- address the impacts of TNC-OBE activity on **indigenous peoples**
- strengthen effective oversight of TNC-OBE activities in **conflict and post-conflict situations**

We recommend that states revisit our recommendations set out above to consider the extent to which these have been addressed in the Draft Elements, and reaffirm our continuing commitment to supporting the IGWG and states in the process towards development of a comprehensive treaty. During and following the 3rd session of the IGWG, we will be in a position to provide further detail and suggestions in connection with each of these additional topics, but in the meantime, we make the following preliminary recommendations.

4.1. Re the primacy of human rights: We welcome the clear confirmation in the Draft Elements of the fundamental principle of the primacy of human rights obligations over trade and investment agreements, and the outlining of state obligations related to this principle including the explicit identification of the duty of states to prepare human rights impact assessments prior to the conclusion of trade and investment agreements, and to refrain from entering into such agreements where they conflict with the protection of human rights. However, we recommend that the Draft Elements should clarify that human rights obligations:

- 1) Must inform trade and investment *dispute settlement procedures*, as well as the negotiation and content of such agreements;
- 2) Require regular review of the actual impacts of *existing* trade and investment agreements, and the renegotiation or cancellation of those that do not align with human rights obligations; and
- 3) Must inform the negotiation, review and entering into *all* international agreements, including those pertaining to international trade, investment, finance, taxation, environmental protection, development cooperation, and security.

4.2. Re the scope of the treaty: We reiterate our recommendation that the treaty should cover all human rights and be applicable to all TNC-OBE, but primarily address the activities of TNCs. While we welcome the fact that the Draft Elements addresses in detail the particularly complex regulatory challenges posed by TNCs, we recommend that:

- 1) The Draft Elements reaffirm that states have obligations to respect, protect and fulfil human rights in connection with the activities of *all* TNC-OBE, including those registered and/or operating in one state;
- 2) The Principles section should explicitly recall the wording of the UNGPs, General Comment No. 24 of the Committee on Economic, Social and Cultural Rights, and the General Comment No. 16 of the Committee on the Rights of the Child emphasising that *all companies* have a responsibility to respect human rights, thus avoiding legal gaps or corporate law constructions that would enable the evasion of accountability; and
- 3) The expression “activities with transnational character” is further clarified in a way that captures those local business enterprises that have some transnational elements, and interpretation of this definition to allow flexibility and the ability to evolve and adapt to the changing nature and structure of business and various global conditions.

4.3. Re the framework requirements for ensuring access to information and participation: While we welcome the fact that the Draft Elements rightly highlight the duty of states to prepare human rights impact assessments prior to concluding trade and investment agreements, we also reiterate that access to relevant, sufficient, quality information and meaningful participation are important during all stages of TNC-OBE activities, including investor-state dispute settlement processes. Transparency and public access to information help to ensure proper oversight of TNC-OBEs, by enabling individuals and civil society to participate, monitor, evaluate and report on possible human rights abuses. When human rights abuse occurs, information and participation are key in seeking accountability and remedies. We recommend that:

- 1) The Draft Elements should clarify the state obligation to provide access to information and public participation, and affirm its significance in enabling affected communities and groups to participate in the decision making of any TNC-OBE activity that can impair their rights and impact the environment;
- 2) Meaningful information and public participation is ensured in the process of human rights and environmental impact assessments, including participatory, free and meaningful consultation processes attentive to the needs and circumstances of differently situated groups; and
- 3) The Draft Elements refrain from containing provisions that allow for exceptions regarding to confidentiality. Instead, full transparency should be encouraged, especially to allow for affected groups and the public to know about the impacts that TNC-OBEs have on their rights and environments.

4.4. Re the affirmation of states’ extraterritorial obligations (ETOs): We reiterate our recommendation that the treaty should set out a general framework for states to ensure compliance with ETOs in the context of TNC activity (including State-owned TNCs). Although the Draft Elements explain that a fundamental purpose of creating the binding framework on TNCs is to “reaffirm that State Parties’ obligations regarding the protection of human rights do not stop at their territorial borders”, we note that provisions regarding to ETOs are lacking. Effective operationalisation of the extraterritorial obligation to protect under human rights law is critical to closing existing gaps of protection with regard to accountability for human rights abuses. We recommend that:

- 1) The Draft Elements confirm that states have the obligation to respect, promote and protect all human rights against violations or abuses including extra-territorially, committed by third parties, which the concerned state is in a position to regulate, or exercise influence over or in

which the TNC-OBE has its center of activity, is domiciled or headquartered or has substantial activities;

- 2) The Draft Elements include the state obligation to adopt and enforce all necessary administrative, legislative, investigative, adjudicatory and other measures to guarantee the right to an effective remedy, in home states, for persons situated extraterritorially whose human rights are impaired by TNCs, which the state is in a position to regulate; and
- 3) Under 'Access to justice, effective remedy and guarantees of non-repetition', the Draft Elements include a provision on the elimination of the use of the doctrine of *forum non conveniens* that has been used as a bar to lawsuits involving TNC activity.

4.5. Re the impacts of TNC-OBE activity on indigenous peoples: We welcome the inclusion in the Draft Elements of the principle of recognition of special protection to indigenous peoples and to the guarantee by states of access to justice and effective remedies to indigenous peoples. Nonetheless, in light of the significant impact of TNC-OBE activities on indigenous peoples, and the fundamental importance of free, prior and informed consent (FPIC) as an element of indigenous peoples' rights (and as derived from the right to self-determination, recognized as part of customary international law and in a number of foundational international legal instruments), we recommend that the Draft Elements explicitly require states to:

- 1) Take concrete, targeted measures to ensure the right to FPIC;
- 2) Adopt legislative and other measures to require TNC-OBEs to identify and address not only human rights impacts resulting from their activities, but environmental impacts as well, as indigenous peoples' rights are intrinsically linked to the health of their natural environment;
- 3) Enable indigenous peoples' active participation and central role in consultation processes surrounding TNC-OBE activities that will affect, directly or indirectly, their land, resources, culture and way of life (including specificity regarding the structure of consultation processes, ensuring that any process is conducted in a culturally appropriate manner and with recognition of differing and disproportionate impacts experienced by indigenous women); and
- 4) Protect, and create an enabling environment for the work of, indigenous human rights defenders and land rights defenders, as they have faced continuous and increasing violence, threats, harassment, arbitrary detention and other serious human rights abuses in the context of peacefully taking action in connection with the impacts of TNC-OBE activities.

4.6. Re the effective oversight of TNC-OBE activities in conflict and post-conflict situations: We note that the Draft Elements does not include any reference to TNC-OBE accountability in the context of conflict or post-conflict situations, and recommend that states take action to consider and address this, particularly as such situations impact on human rights impact assessment, ongoing human rights due diligence and monitoring, and access to justice and effective remedies. In such considerations, states should recognise the balance between addressing immediate conflict-related issues, and ensuring human rights as an essential foundation to re-build societies in the longer-term.

SIGNATORIES:

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

This submission was coordinated by ESCR-Net's **Corporate Accountability Working Group**, which 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.