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ESCR-Net
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**ESCR-Net - International Network for
Economic, Social and Cultural Rights**

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To: Working Group on Business and Human Rights
Office of the High Commissioner for Human Rights
UNOG-OHCHR, CH-1211, Geneva, Switzerland

Subject: ESCR-Net input on corporate capture and corporate political engagement

Dear Surya Deva,

Dear Elzbieta Karska,

Dear Fernanda Hopenhaym,

Dear Githu Muigai,

Dear Anita Ramasastry,

This submission is made on behalf of ESCR-Net - International Network for Economic, Social and Cultural Rights, and particularly under the leadership of ESCR-Net's Corporate Accountability Working Group. Our Network is a collective of more than 280 members – social movements, Indigenous Peoples groups, NGOs and human rights defenders – including feminist and women's rights movements across 76 countries working together to make human rights and social justice a reality for all. Our submission will illustrate how corporate political engagement increasingly undermines the promotion, protection, and fulfillment of human rights, including in the context of decision-making at the United Nations (UN) and other multilateral bodies. This is especially concerning given that no accountability mechanisms are available for individuals seeking remedy for corporate-related human rights abuses or violations. The submission will further highlight how the phenomenon of 'corporate capture – especially that of the UN and other multilateral decision-making spaces – has contributed significantly to the derailment of justice and the full realization of human rights.¹

¹ In 2021, ESCR-Net published its first episode of a comic on corporate capture. This episode is focused primarily on corporate capture of the United Nations. To view the comic and dedicated background document, please visit: <https://www.escr-net.org/comic-series/power-99-stop-corporate-capture>

This submission is an opportunity to return to discussions concerning the 20th anniversary of the UN Conference on Sustainable Development in 2012. At that time hundreds of movements and civil society organisations rallied to ‘Reclaim the UN’ and urged the UN to limit the excessive influence of multinational corporations on its decision-making process². Almost 10 years later, we are alarmed at how the legitimacy, neutrality, and objectivity of the UN is at stake as it continues opening space for corporate interference in UN decision-making. We have strong concerns about the growing influence of corporations and business lobby groups over the positions of national governments in UN negotiations, and their general dominance in certain UN bodies and discussion spaces. Increasingly, we see UN policies being developed not necessarily in service of the public interest, but rather, in support of commercial interests of certain companies or business actors. Many of these policies promote the idea of ‘multi-stakeholderism’ in decision-making despite warnings by civil society organisations and social movements that this approach is not only counterproductive in seeking accountability and advancing human rights but also dangerous, as illustrated in the examples of corporate capture provided below. Multi-stakeholderism -- which operates on the false premise that corporate, civil society and state contributions are all equally valid and supportive of human rights – is a means to develop financial connections with corporate entities, at the detriment of human rights and the climate.

The consequences of relying on multi-stakeholderism in decision-making at the UN are dire as they permit corporate entities to monopolize the space and shape policies that benefit their profit making. The key concern with regards to this long-standing practice is that it ignores the inherent conflict of interest that corporations have in these decision-making spaces since they have a clear profit-motive, and they place corporate actors on equal footing with governments regardless of the fact that States alone hold the responsibility to regulate in the public interest and to ensure the realisation of human rights, without the need to ask for consent from corporate entities who are at the forefront of human rights abuses and violations. Secondly, even when multi-stakeholder initiatives create space for other civil society actors to offer input to States, the power imbalances are immense. Corporate actors regularly wield the credible threat of financial consequences against non-compliant States, as well as having the resources to muster teams of lobbyists, lawyers, and public relations experts to influence decision-making.

History has shown that attempts to persuade or convince industry to respect human rights and support people-centered economic alternatives that prioritize the common good and the good of our planet are inefficient and ineffective. On the one hand, this is because these attempts have not tackled the structural problem of impunity within and outside the UN. However, more significantly, failed attempts to change corporate behavior is due to the simple fact that these attempts have promoted and pushed the development and implementation of voluntary standards such as the UN Guiding Principles on Business and Human Rights (UNGPs). It is problematic that

² To find out more about the global campaign to reclaim the UN, please visit: https://www.foei.org/press_releases/archive-by-year/press-2012/reclaim-the-united-nations-campaign-starts-today

many powerful governments and UN agencies have adopted the UNGPs as the main strategy towards ending corporate impunity. While the UNGPs could be useful as guidance for corporations, they fail to address the need to limit corporate interference in efforts for corporate accountability and legal liability beyond due diligence, both nationally and at the UN and other multilateral forums. In fact, due to the tremendous power and influence of corporations, the best model we have for effectively regulating industries is to impede industry from participating in policy making processes where it has a conflict of interest, as was done in the Framework Convention on Tobacco Control (FCTC). Industry should not have an explicit and designated platform within policy-making processes created to regulate their own human rights impacts.

How should “corporate capture” and its connection with human rights be defined?

Corporate capture refers to the means by which economic elites undermine the realization of human rights and environmental protection by exerting influence over domestic and international decision-makers and public institutions. The manifestations of corporate capture identified by ESCR-Net members over years of analysis involve community manipulation, economic diplomacy, judicial interference, legislative and policy interference, privatizing the use of public services (including public security services), revolving door practices, shaping narratives, and the capture of academic institutions.³

What distinguishes legitimate corporate political engagement from undue political influence by businesses which carries human rights risks? Are there specific examples of undue corporate influence that has led to government decision-making that negatively impacts human rights? Are there specific sectors where this has taken place either in the global or domestic context?

All corporate engagement in multilateral decision-making spaces, such as the UN, carries human rights risks. This is particularly true given the fact that corporate entities have a clear conflict of interest between agendas of profit-making and agendas to develop policies and legislative measures that would prioritize human rights over everything else. There are several examples of corporate influence that have undermined human rights and negatively impacted government decision-making, particularly at the UN and other multilateral bodies such as the World Trade Organization. A few include:

1. **The United Nations Framework Convention on Climate Change and Conference of Parties:** In a report from 2018, a member organization of ESCR-Net called Corporate Accountability wrote extensively on the International Emissions Trading Association (IETA) and how they have captured UN spaces. IETA was founded and is run by some of

³ To find out how ESCR-Net defines these manifestations, please visit: <https://www.escr-net.org/corporateaccountability/corporatecapture/manifestations-corporate-capture>

the world's biggest polluters and has been leading the charge for carbon markets in the Paris Agreement guidelines. In spite of its clear profit motivation, it is one of the most prominent and influential trade associations at the UN Framework Convention on Climate Change (UNFCCC). If groups like IETA are successful in embedding policies like carbon markets, the Paris Agreement may well become yet another failed climate accord.⁴ Policies like those of IETA are advancing to maintain the status quo: a trajectory of fossil fuel dependence, spiraling inequality, and warming that far exceeds 2 degrees Celsius. In the UN Climate Change Conference 2019 (COP25), Corporate Accountability also found that some of Spain's biggest polluters and others heavily invested and involved in fossil fuels had been funding the COP25 meeting in Madrid.⁵ In addition to their climate crimes, many of these polluters have been tied to human rights and worker abuses and violations around the globe. These clear conflicts of interest undermine the purpose and aims of these meetings, and seriously call into question the credibility of the UN and States' commitments to end climate change.

- 2. The United Nations Food and Agriculture Organization:** In a letter sent to the Director General of the United Nations Food and Agriculture Organization (FAO) in November 2020, FIAN International and several other members and allies of ESCR-Net highlighted that FAO planned to "renew and strengthen" the FAO's alliance with CropLife International — the trade association for the pesticide/biotech industry — and to "explore new partnerships" with that industry.⁶ A strengthened partnership would deeply undermine the ability of this UN body to make decisions regarding agriculture without the influence of CropLife International and their agenda to profit from the sale of products that have documented harmful impacts on biodiversity, ecosystem integrity and function, the health and livelihood of peasant farmer, agricultural workers, and rural and Indigenous Peoples. Accordingly, civil society called on the FAO to reconsider and discontinue this deeply inappropriate alliance with CropLife International. Furthermore, scientists, academics and researchers expressed their concern about such capture in a letter sent to the FAO Director-General noting that "*UN institutions including the FAO should not be supporting a consortium of private businesses that stand to profit from the continued sale of products with documented harmful impacts on biodiversity including pollinators, ecosystem integrity and function, the health and livelihood of peasant farmers, vulnerable agricultural workers, rural and Indigenous communities.*"⁷

⁴ For more information about why a carbon makers approach to addressing the climate crisis is not likely to succeed, please visit: https://www.corporateaccountability.org/wp-content/uploads/2018/04/CA_Bonn_Cop24_2018_webEN.pdf

⁵ For factsheet by Corporate Accountability on COP25 funders, please visit: https://www.corporateaccountability.org/wp-content/uploads/2019/12/COP25_CorpSpon_EN-FINAL.pdf

⁶ Letter by more than 350 civil society organizations and 250 scientists to Director-General of UN Food and Agriculture Organization, please visit: <http://pan-international.org/release/350-civil-society-organizations-and-250-scientists-call-on-the-un-agency-not-to-partner-with-croplife-international/>

⁷ Letter from academics, scientists & researchers expressing concern regarding FAO's announcement of plans to forge a new strategic partnership with CropLife International, please visit:

3. **The United Nations Food Systems Summit:** Hundreds of civil society organizations, Indigenous Peoples, social movements, and peasants boycotted the UN Food Systems Summit (UNFSS) this year citing that the agenda had been hijacked by an opaque web of corporate interests.⁸ FIAN International highlighted in a press release that the Summit did not represent the interests of the people.⁹ Speaking about the UNFSS, the Secretary General of FIAN International argued, “[t]he UN has provided a cover of legitimacy for corporations to capture the narrative and deflate public pressure – it has not been an honest broker. [...] The refusal to discuss major issues like concentration in every part of the food system, corporate land grabs, taxation and accountability for human rights means the summit will fail.” The UNFSS is yet another space where "multi-stakeholderism" comes at the expense of advancing human rights at the UN and beyond. FIAN International issued a comic earlier this year to illustrate how corporate actors are influencing the UNFSS process.¹⁰
4. **The UN Office of the High Commissioner for Human Rights:** In 2017, the Office of the UN High Commissioner for Human Rights (OHCHR) announced a five-year partnership with Microsoft Corporation. As part of the agreement, Microsoft promised to provide a grant of USD 5 million to support the work of OHCHR. ESCR-Net members wrote a letter expressing concern that such a formalized partnership undermines the independence of OHCHR at a time when the private sector is leading the charge against human rights and those who defend these rights, including in regard to the tech and surveillance sector.¹¹ The Microsoft / OHCHR agreement represents a wider trend in which most UN agencies are taking substantial private sector funding, with OHCHR seen as one of the last independent bodies. It is important that international human rights institutions like OHCHR maintain both real and perceived independence from corporate interests. We do not intend to suggest a lack of integrity within the OHCHR; however, we are concerned about the potential influence such an arrangement may have on the work of OHCHR and the damage such arrangements could do to public perception of the OHCHR’s work, particularly given the lack of transparency related to the partnership. The interactions arising through a formal partnership – particularly where it contains the possibility of renewed financial support if the company is happy with the arrangement – may indirectly influence, or have the appearance of influencing, the direction of OHCHR’s human rights activities generally and

[https://www.fian.org/files/files/Letter from academics, scientists & researchers on FAO & CropLife International\(1\).pdf](https://www.fian.org/files/files/Letter_from_academics_scientists_&_researchers_on_FAO_&_CropLife_International(1).pdf)

⁸ The Guardian, ‘Corporate colonization’: small producers boycott UN food summit, 23 September 2021, please visit: <https://www.theguardian.com/environment/2021/sep/23/small-producers-boycott-un-food-summit-corporate-interests>

⁹ For FIAN International press release on the UNFSS 2021, please visit: <https://www.fian.org/en/press-release/article/unfss-not-our-summit-2813>

¹⁰ FIAN International comic entitled “The Corporate Capture of Food Systems, please view: [https://www.fian.org/files/files/Food_Systems_092321_\(003\).pdf](https://www.fian.org/files/files/Food_Systems_092321_(003).pdf)

¹¹ ESCR-Net letter on OHCHR/Microsoft partnership, please visit: [https://www.escr-net.org/sites/default/files/attachments/escr-net letter to ohchr on microsoft partnership.pdf](https://www.escr-net.org/sites/default/files/attachments/escr-net_letter_to_ohchr_on_microsoft_partnership.pdf)

specifically with respect to scrutiny of Microsoft’s business activities and other associated corporations.

5. **The United Nations Open-Ended Intergovernmental Working Group to elaborate a legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights (IGWG):** From the outset of the IGWG process, ESCR-Net members have individually and collectively raised concerns about the long track record of blatant corporate capture of UN and related global processes.¹² The examples in this submission provide a clear overview of how corporations are working to capture multilateral platforms in ways that would ultimately benefit them financially. In 2018, the International Organization of Employers (IOE) submitted a document to States participating in the IGWG threatening individual States involved with billions of dollars of divestment if the treaty were to take effect.¹³ Despite this craven attack on the integrity of the process and the States involved, we are concerned to see the IOE, as well as the International Chamber of Commerce (ICC), and the United States Council for International Business (USCIB) continue to be given the floor to speak in the IGWG, often even before affected people, human rights defenders and supporting civil society organizations. Of concern, the ICC was granted Observer Status at the United Nations in December 2016—providing businesses with direct access into the UN system for the very first time.¹⁴ According to a report carried out by Corporate Accountability, the IOE and ICC have strong ties to abusive industries and as such have a vested interest in blocking, weakening, and delaying the negotiation and implementation of the draft treaty and other regulatory processes that might impact their members’ bottom lines.¹⁵ We have already seen the IOE, the USCIB, and the ICC come out against strong liability provisions that could provide meaningful remedies for affected communities. During the 7th session of the IGWG, capture of this process became more evident when States, influenced by corporate representatives headquartered in the Global North, approved a final report explicitly

¹² Kate Lappin, co-authored with Haley Pedersen & Tessa Khan, Asia Pacific Forum on Women, Law and Development (APWLD), Influence of corporations in treaty process would undermine affected communities’ interests, July 2015, please visit: <https://www.business-humanrights.org/en/blog/influence-of-corporations-in-treaty-process-would-undermine-affected-communities-interests/>

¹³ IOE Additional Analysis, The United Nations’ proposed Treaty imposing corporate liability for human rights violations and the potential economic implications associated with its ratification, October 2018. UN Treaty Process on Business and Human Rights. Appendix A. Available at: <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=134801&token=d7a258add75010adcfe247d545274bc2d86f0f1e> See also: Corporate Accountability ‘*Behind the veil of civility: the ICC & IOE exposed*’. Available at: https://www.corporateaccountability.org/wp-content/uploads/2019/10/CA_ICCexposed_onepager_09-FINAL.pdf and, Novethic (2018) *International Treaty on Human Rights May Do More Harm Than Good, According to Employers’ Organizations*. Available at: <https://www.novethic.com/csr/isr-rse/international-treaty-on-human-rights-a-false-good-idea-according-to-employees-organisations-146516.html>

¹⁴ ICC, Business and the United Nations, please visit: <https://iccwbo.org/global-issues-trends/global-governance/business-and-the-united-nations/>

¹⁵ Corporate Accountability, *Behind the veil of civility: the ICC & IOE exposed*, please visit: https://www.corporateaccountability.org/wp-content/uploads/2019/10/CA_ICCexposed_onepager_09-FINAL.pdf

naming business in paragraph 20(d), for the first time, as a stakeholder that will be consulted and invited to submit input on the revised third draft legally binding instrument.¹⁶ As is evident from the report of the 7th IGWG session, corporations backed by their home States continue to exert significant influence in this space in attempts to hinder the ongoing IGWG process to elaborate a legally binding instrument to regulate corporate activities. There is no surprise that there is great opposition to this instrument and the process itself by corporate actors and States that protect their interests. The scope and ambition of this instrument is unprecedented within the context of the UN, and governments must act to implement the highest standards of protections against corporate capture/interference of this process.¹⁷

6. **The International Seabed Authority (ISA):** According to an extensive report by Mining Watch Canada, “the processes surrounding the seabed mining regulations appear to be pushed along by would-be Deep Sea Mining companies and skewed towards their interests. It is questionable whether the International Seabed Authority (ISA) – the UN agency responsible for managing seabed resources outside national jurisdictions and charged with developing DSM regulations for this area – is in fact able to serve the interests of its member States and the environment it is mandated to protect. The Secretary-General of this UN body, Michael Lodge, actively promotes the commercial interests of one seabed mining company, DeepGreen Metals Inc., in the company’s advertising videos and in orchestrated panels at meetings of Pacific Island political leaders. The ISA’s Legal and Technical Commission which drafts the Mining Code is closed to civil society participation, despite receiving direction from the ISA Assembly to meet in open sessions. The exploration licences the ISA Secretariat has issued to DeepGreen and other companies are also confidential, as are the annual reports on exploration activities that companies are required to submit to the ISA.”¹⁸
7. **The World Trade Organization:** Going back 25 years in time,¹⁹ one would learn that Pfizer, among other giant pharma companies, aggressively lobbied rich governments for years to put in place rules and regulations that would protect patents and other intellectual property, so they could maintain a monopoly over vaccine and drug profits. Many governments obliged, and in a clear form of corporate capture, Pfizer, and other corporate elites in the pharma industry spearheaded efforts to influence the adoption of intellectual property rights and patent protections at the World Trade Organization (WTO) called

¹⁶ Report on the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, please visit:

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session7/igwg-7th-draft-report.pdf>

¹⁷ To view ESCR-Net’s position on the 7th IGWG session for a legally binding instrument, please visit:

<https://www.eschr-net.org/news/2021/statement-states-must-act-urgently-adopt-legally-binding-instrument-regulate-corporate>

¹⁸ Deep Sea Mining Campaign, London Mining Network, Mining Watch Canada. 2019. Why the Rush? Seabed Mining in the Pacific Ocean. July. https://miningwatch.ca/sites/default/files/why_the_rush.pdf

¹⁹ Sarah Lazare. In These Times. Pfizer Helped Create the Global Patent Rules. Now it's Using Them to Undercut Access to the Covid Vaccine. December 2020, please visit: <https://inthesetimes.com/article/pfizer-covid-vaccine-world-trade-organization-intellectual-property-patent-access-medicines>

Trade-Related Aspects of Intellectual Property Rights (TRIPS).²⁰ TRIPS is one of the biggest obstacles to the fair distribution of the COVID-19 vaccine. It comes as no surprise that countries like the United Kingdom, the United States, Canada, Australia, and the EU all initially opposed a proposal submitted by India and South Africa to temporarily waive intellectual property rights and patent protections for COVID-19 vaccines and treatments at the WTO (the United States has voiced support for a vaccines-only waiver).²¹ This proposal, if agreed upon by all countries of the WTO, could be a first step in the mass production of treatments and inoculations against COVID-19, which would ensure dissemination to a much larger number of the world's population and at a more reasonable cost. Worryingly, our dominant economic system allows for the pharma industry to capture global healthcare decisions, increasing their profits and undermining peoples' rights. We must remember, the right to health is an obligation that must be fulfilled by States – it is not a commodity to be traded. Whether in the UK, the US or other Western countries where pharmaceutical giants are headquartered, companies such as Pfizer have an alarming impact on decisions of public health.²² This comes as no surprise as in 2019 alone, Pfizer spent US\$ 11 million on lobbying.²³ Additionally, it seems at least one Pfizer board member, Joseph Echevarria, has worked with the US government at some point in his professional career, exemplifying the influence of corporate elites on government decision making – a classic form of corporate capture called revolving doors.²⁴ Another major concern when addressing corporate capture of government decision making on healthcare is the lack of transparency at all stages in the production and distribution process, from lobbying efforts to production costs.²⁵ For example, licensing deals to manufacture COVID-19 vaccinations have not been made public and do not reveal how billions of dollars of public money was spent to manufacture the vaccine.²⁶ An estimated US\$ 19 billion of global public funding and taxpayers' money was spent on the research for a COVID-19 vaccine.²⁷ In another emblematic form of corporate capture, economic

²⁰ Achal Prabhala, Benny Kuruvilla, Burcu Kilic and Dana Brown . We can't let the WTO get in the way of a 'people's vaccine', The Guardian. 2020. Please visit:

<https://www.theguardian.com/commentisfree/2020/oct/15/peoples-vaccine-coronavirus-covid-wto>

²¹ Michael Safi, UK faces calls to drop opposition to patent-free Covid vaccines, The Guardian, 2020, please visit: <https://www.theguardian.com/world/2020/nov/19/uk-faces-calls-drop-opposition-patent-free-covid-vaccines-wto> and please visit: https://www.wto.org/english/news_e/news20_e/trip_20oct20_e.htm.

²² Alexander Zaitchik, How Big Pharma Was Captured by the One Percent, June 28, 2018, please visit: <https://newrepublic.com/article/149438/big-pharma-captured-one-percent>

²³ OpenSecrets, Pfizer Inc profile, please visit: <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000000138>

²⁴ Bio of Joseph Echeverria, please visit: <https://www.bnymellon.com/us/en/investor-relations/corporate-governance/board-of-directors/echevarria.html>

²⁵ ALTER-EU, When Big Business Dominates Policy-Making and Threatens our Rights: Corporate Capture in Europe, 2018, please visit: <https://www.alter-eu.org/corporate-capture-in-europe>

²⁶ MSF, Governments must demand pharma make all COVID-19 vaccine deals public, 2020, please visit: <https://www.msf.org/governments-must-demand-all-coronavirus-covid-19-vaccine-deals-are-made-public>

²⁷ HRW, Rights, Transparency Central for Covid-19 Vaccines, 2020, please visit: hrw.org/news/2020/10/29/rights-transparency-central-covid-19-vaccines

diplomacy at the WTO and policy interference in public health decisions have left taxpayers and community members unable to access critical information that would allow for equitable access to COVID-19 vaccines that they have essentially funded in large part. Keeping people in the dark emboldens the monopolization of companies such as Pfizer and allows them to commodify and overprice vaccines, so they can only be bought by a select few countries, many of whom hoard it, deepening global inequalities and colonial legacies. According to a recent report, “[b]illions are unlikely to get jobs as rich countries secure 53% of most promising vaccines.”²⁸ Independent UN experts decried COVID vaccine hoarding in a statement saying that there is no room for nationalism in the distribution of the vaccine and calling for equitable access to all.²⁹ Similarly, the World Health Organization chief also warned against COVID-19 ‘vaccine nationalism’, urging support for fair access.³⁰ In an urgent appeal to UN special procedures, ESCR-Net urged independent experts, including the UN Working Group on Business and Human Rights, to issue allegation letters in efforts to seek accountability in cases where State and corporate actors have obstructed equitable access to healthcare throughout the COVID-19 pandemic.³¹

8. **The World Economic Forum:** ESCR-Net supported a statement led by FIAN International last year with regards to the UN partnership with the World Economic Forum (WEF).³² The agreement grants transnational corporations preferential and differential access to the UN System at the expense of States and public interest actors. This “preferential access,” would undermine the mandate of the UN as well as its independence, impartiality, and effectiveness when holding businesses to account.
9. **UN Procurement Processes:** Human rights due diligence in UN procurement processes in Syria have failed dangerously, facilitating corporate involvement in conflict and grave crimes. In large part, this is due to a lack of transparency in contracts and around procurement and this leaves the UN open to the perception and accusation of corporate capture. The UN is in a precarious situation for not carrying out proper due diligence in business connected to the Syrian conflict. Over nine years of conflict have decimated

²⁸ Sarah Boseley, Nine out of 10 in poor nations to miss out on inoculation as west buys up Covid vaccines, The Guardian, 2020, please visit: <https://www.theguardian.com/society/2020/dec/09/nine-out-of-10-in-poor-nations-to-miss-out-on-inoculation-as-west-buys-up-covid-vaccines>

²⁹ UN News, Independent UN experts decry COVID vaccine hoarding: ‘No one is secure until all of us are’, Nov 2020, please visit: <https://news.un.org/en/story/2020/11/1077192>

³⁰ UN News, WHO chief warns against COVID-19 ‘vaccine nationalism’, urges support for fair access, August 2020, please visit: <https://news.un.org/en/story/2020/08/1070422>

³¹ ESCR-Net, Urgent appeal: Call for urgent action to secure universal and equitable access to COVID-19 vaccines, April 2021, please visit: <https://www.escr-net.org/news/2021/urgent-appeal-call-urgent-action-secure-universal-and-equitable-access-covid-19-vaccines>

³² Corporate Capture of Global Governance: WEF-UN Partnership Threatens UN System, please visit: <https://www.escr-net.org/news/2019/corporate-capture-global-governance-wef-un-partnership-threatens-un-system>

Syria's infrastructure, killing hundreds of thousands and displacing millions more.³³ Given the scale and severity of human rights violations in Syria, humanitarian agencies should proactively avoid contributing to or facilitating such abuses, abide by the humanitarian principle of do-no-harm and their existing commitments to human rights, as well as mitigate the reputational risks associated with facilitating human rights abuses. As such, it is imperative that UN agencies improve their human rights due diligence capacities. Despite requirements under international law and the UN's internal guidelines to ensure UN procurement is consistent with human rights, UN agencies' procurement processes do not appear to include robust human rights due diligence assessments in their procurement processes in Syria. Finally, the most developed regimes around human rights compliance in procurement and supply chains focus on child labor, labor and sexual exploitation-related abuses, environmental abuses, and hiring of private security forces. In the context of Syria, the range of human rights abuses that a vendor may be involved in are much wider, and may include contributing to or facilitating torture, abuse in detention, unlawful confiscation of property, and discriminatory distribution of aid, among others. Without conducting human rights due diligence specific to the Syrian context, UN agencies may find themselves financing entities that are owned or run by actors who have or are committing human rights abuses to provide supplies or services to their operations. The UN may also provide funding that enables these actors to conduct abuses in other contexts outside that of the UN-funded projects.³⁴

10. The UN Women's Empowerment Principles (WEPs): WEPs is designed by UN Women and the UN Global Compact to showcase best practices on women's rights and gender equality in private sector operations. At its core, the partnership of UN Women with the UN Global Compact is worrying since the strand of privatization of the UN began with the creation of the UN Global Compact in 2000.³⁵ More recently, the UN Financing for Development (FfD) conference related to the Sustainable Development Goals had envisioned relying almost solely on private sector financing and public private partnerships.³⁶ The WEPs were agreed to provide "guidance to business on how to promote gender equality and women's empowerment in the workplace, marketplace and community" and draw on international labour and human rights standards. According to

³³ Trocaire, 10 years on : 10 Facts that explain Syria's conflict, 12 Mar 2021, please visit:

<https://www.trocaire.org/news/10-years-on-10-facts-that-explain-syrias-conflict/>

³⁴ This information is based on a report by the Syrian Legal Development Programme's Human Rights and Business Unit, in collaboration with Human Rights Watch. This report is publishing soon a guidance where they look at the UN's procurement practices in Syria. They have also included recommendations and identified areas of improvement and detailed why it is important to include human rights due diligence in procurement processes in Syria.

³⁵ FoEI, UN global compact turns a blind eye to corporate malpractices, please view:

https://www.foei.org/press_releases/archive-by-year/press-2012/un-global-compact-turns-a-blind-eye-to-corporate-malpractices, and UN Global Compact - partnerships, please visit: <https://www.unglobalcompact.org/take-action/partnerships>

³⁶ Angela Zarro, The capture of development by corporate interests at the UN, July 2015, please visit:

<https://csoforffd.org/2015/07/10/the-capture-of-development-by-corporate-interests-at-the-un/>

UN Women, the WEPs are the “primary vehicle for corporate delivery” on gender equality within the 2030 agenda and the UN Sustainable Development Goals. According to a third-party and independent evaluation based on the overall analysis, companies performed the best in overall strategy, social investments and hiring practices. By contrast, companies have made little progress in communicating their policies and improving gender equality and inclusion in their supply chains. Similarly, the companies scored lower in practices related to parental leave. It is clear from the companies’ responses in the individual categories that the companies might be producing evidence-based information internally. However, not all of these documents are publicly available, which makes it difficult to assess companies’ commitment towards the WEPs.³⁷ The predominant critique that feminists and women’s rights organisations of ESCR-Net have raised is that this is a space where CSOs are not invited, or their participation is limited or instrumentalised. The WEPs also fail to tackle the larger issues within economic and social structures and the obstacles to women and girls in those structures. Also implicit in the WEPs is the idea that economic growth and gender equality are directly linked, taking for granted the current growth-centric, mainstream development models. The WEPs do not tackle the ways in which the private sector characteristics, policies and behaviors are at the root of existing poverty and inequalities. There is neither sufficient monitoring, nor models to see how WEPs are addressing structural power relations and how the WEPs address discrimination based on gender, class, age, sexual orientation, race, caste, to name a few.

What measures can States take to prevent and address corporate political activities that may undermine the State’s ability to protect human rights and businesses’ responsibility to respect human rights, including situations arising from trade and investment frameworks?

- **Put a stop to multi-stakeholderism within the UN:** In a briefing paper, FIAN International provides an outline of human rights concerns with regards to multi-stakeholder initiatives.³⁸ Taking the example of the UNFSS, the UN Special Rapporteur on the right to food in a recent [report](#) explained that considering everyone a stakeholder “...ignores existing asymmetries of power and creates a system of privilege that actively marginalizes and excludes most people. Multi-stakeholder governance also leaves the role of States unclear and does not address their role as the main duty bearers. The result is that those with the most power and wealth can devote the necessary resources to influence the process. Multi-stakeholder governance also contributes to the fragmentation of global food governance, raising new challenges in terms of accountability, coherence and efficiency.

³⁷ Independent Evaluation on Implementation of UN Women’s Empowerment Principles (WEPs) by Behind the Brands Companies Dr. Ritu Mahendru with Salma Sabri 19 February 2021, please visit: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621163/Sabri%20and%20Mahendru%20WEPs%20Evaluation.pdf;jsessionid=73BC2AFDC39550BF39912D5E453C63B6?sequence=13>

³⁸ FIAN International, Briefing Note on Multi-Stakeholder Initiatives (MSI) April, 2020, please visit: https://www.fian.org/files/files/Briefing_Note_on_Multi-Stakeholder_Initiatives_Final_e_revised.pdf

Added to this fact are all the barriers to participation caused by the pandemic.”³⁹ Contrary to the accurate analysis of the Special Rapporteur on the right to food, we see the UN Secretary General “Our Common Agenda” report actively and openly promotes multi-stakeholderism where everyone is invited to weigh in. Additionally, one of the report’s key proposals, namely under commitment 10, aims for stronger engagement between the UN system, international financial institutions, and regional development banks. It also calls for more systematic engagement with the private sector.⁴⁰ As such, States must prohibit industry participation in policy-making both at the multilateral and national level.

- **Promote mechanisms of corporate accountability at the UN and beyond**, including by State participation in the IGWG process to elaborate a legally binding instrument in a way that is effective, in good faith, prioritizing human rights defenders, and that would regulate corporate and economic actors, beyond obligations of mandatory due diligence, extending to liability for abuses and violations of human rights.

Following the details provided above, and to avoid corporate capture in the context of the work of the UN and other multilateral spaces, our recommendations include:

1. The UN should create and implement a code of conduct for UN officials prohibiting their ability to work for corporate lobby groups or lobbying firms in the first 2 years after starting with or leaving the UN. Similarly, a revolving door policy should be established for all individuals working as part of UN member State delegations. This requirement should entail that anyone representing a member State in any UN event must not have worked at a for-profit entity - or any entity representing for-profit entities, like trade associations - for at least 2 years. Such an important revolving door measure would send a signal regarding the appropriate degree of separation between corporations and States that is required for States to meet their obligations to respect human rights.
2. UN and other multilateral bodies should require government delegations, including individual investors or stockholders, to disclose conflicts of interest with corporate entities in relevant spaces of decision or policy making - and prohibit unnecessary State interactions with industry as well as partnerships, contributions, revolving doors, industry-drafted legislation, voluntary codes, and industry representatives on government delegations.
3. States, multilateral bodies, as well as UN agencies and individual affiliates, including the UN Working Group on Business and Human Rights, must publicly issue conflict of interest declarations where they have vested interests in corporate or economic activity - in line with the practices and guidelines of the FCTC. States and UN agencies, including individual affiliates, must also publicly disclose all other existing relations and links with

³⁹ Interim report of the SR on the right to food, Michael Fakhri, UNGA doc. A/76/237, please visit: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/208/03/PDF/N2120803.pdf?OpenElement>

⁴⁰ UNSG report “Our Common Agenda”, please visit: https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf

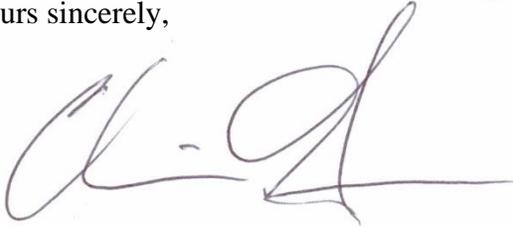
the private sector, including private meetings that are aimed to give human rights guidance. Where a conflict of interest arises between States or the UN affiliates and business, those involved may not be allowed to participate in government and multilateral decision-making at any level. States, the UN and other multilateral bodies must adopt clauses to ensure that any failure to disclose conflicts of interest should result in disciplinary action and accountability.

4. States, multilateral bodies, and UN agencies, including the UN Working Group on Business and Human Rights, must not invite business entities or economic actors into decision-making spaces, nor consult them on the realization of human rights due to the outstanding conflict of interest. Instead, these bodies are urged to provide business entities with guiding notes on compliance with human rights based on the demands of affected communities and issue business entities letters of allegations or letters of questioning related to human rights abuses and violations as reported by civil society, social movements and/or affected communities.
5. States, multilateral bodies, and UN agencies, including the UN Working Group on Business and Human Rights, must actively and systemically promote and advance analysis by civil society and communities affected by corporate-related abuses or violations of human rights. In particular, demands highlighting the need for accountability at a time when voluntary measures are not sufficient must be prioritized in agendas of work, and this should include an independent investigation into how voluntary measures have been used to undermine, disrupt or delay remedy and legal liability - including via delaying the United Nations IGWG process to elaborate a legally binding instrument on transnational corporations and other business enterprises with respect to human rights.
6. States, multilateral bodies, and UN agencies, including the UN Working Group on Business and Human Rights, must urge amendments to eliminate the traditional approach of multi-stakeholderism promoted in the report of the UNSG entitled “Our Common Agenda”. This would be key to maintaining the legitimacy, objectivity, neutrality, and effectiveness of work on public interest and human rights and would also be key to stopping corporate capture.
7. UN agencies must be fully transparent in procurement processes and due diligence pertaining to their own conduct of business, particularly in conflict-affected areas, and must set up an independent mechanism of accountability where UN agencies may be complicit or contributing to violations or abuses of human rights. Additionally, UN agencies, including the UN Working Group on Business and Human Rights, should ensure that existing tools of transparency within the context of the UN are continuing to develop and be replicated in different contexts. For example, resources should be allocated to ensure that the UN Human Rights Council (HRC) mandated UN Database of business enterprises involved in certain activities relating to settlements in the Occupied Palestinian Territory, is updated annually as one tool to mitigate against corporate capture in conflict settings.

This tool has potential to be modeled for use in other contexts of occupation and conflict, including in Syria, and has indeed been used in an HRC resolution on Myanmar.

8. States, multilateral bodies, and UN agencies, including the UN Working Group on Business and Human Rights, must address more accurately and explicitly the fact that mandatory due diligence is only one step in ending corporate impunity but that it does not guarantee accountability on its own. Additionally, there must be recognition that there is a dangerous gap in corporate accountability due to the lack of an independent judicial mechanism of accountability without influence of corporate and economic actors.
9. States, multilateral bodies, and UN agencies, including the UN Working Group on Business and Human Rights, must put an end to the increasing financing of the UN by corporate and economic actors. This requires States to make more commitments to funding, particularly of spaces that prioritize the engagement, demands and participation of civil society, social movements, and communities most affected by corporate violations or abuses.
10. States, multilateral bodies, and UN agencies, including the UN Working Group on Business and Human Rights, must prioritize the interests of the public good in their work and modalities of work so as to avoid another scenario of inequitable access to healthcare as we have seen in the context of COVID-19 pandemic.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C. Grove', with a long horizontal line extending to the right.

Chris Grove
Executive Director

ESCR-Net - International Network for Economic, Social and Cultural Rights