

**ETO Consortium urges States to actively negotiate and promptly adopt a  
"Legally binding instrument on TNCs and Business Enterprises with Respect to  
Human Rights", including clear regulations on corporate accountability beyond  
borders and respect for democratically adopted UN Human Rights Council  
Resolution 26/9**

**19 June 2022**

Ahead of the eighth session of the United Nations (UN) Open-Ended Intergovernmental Working Group to Elaborate a Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights (IGWG), members of the [ETO Consortium](#) call upon States to urgently activate key government officials to review the current draft legally binding instrument (LBI), which includes textual suggestions by States, in an effort to negotiate meaningfully and effectively for a strengthened draft at the IGWG session, that centers the demands of communities affected by corporate power. Negotiations will enter a new stage in October 2022.

In particular, we call on States to defend existing provisions in the LBI draft to promote the implementation of [extraterritorial obligations](#) (ETOs) – including the expanded access to justice for people affected by corporate abuses and violations – with the maintenance of international doctrines of *forum non-conveniens*, and *forum necessitatis* in the revised draft. These doctrines are key for accountability.

States' human rights obligations extend beyond their national borders towards people living in other countries – especially where corporate entities incorporated under their jurisdiction, conduct activities and have business relationships outside of their territories. These obligations are crucial to strengthen the legal basis for human rights to regulate globalization and create an enabling environment for the universal fulfilment of economic, social, cultural, civil and political rights and for the protection of the environment. Given the transboundary nature of many of today's human rights challenges, including climate change and eco-destruction, tax evasion or corporate impunity, it is impossible to guarantee human rights universally without implementing both domestic and extraterritorial obligations.

We also strongly call on States to strengthen the provisions on legal liability of corporations in the LBI, particularly of parent and controlling companies. States must ensure that this LBI advance corporate accountability, particularly of transnational corporations, and have a strong standard of legal liability of corporations that could be incorporated into the domestic legal systems of signatory States. The draft must include a provision reaffirming the joint and several liability between all companies involved in an abuse or a violation along the global value chain and/or in armed conflicts. A just transition to more sustainable and ecological societies in times of digitalization also require an explicit recognition of financial institutions and digital businesses as part of businesses webs. They shall also be held liable in cases of human rights harm. Additionally, the notion of criminal liability could be further strengthened by the

mentioning of specific examples of sanctions or penalties that companies could face such as e.g. withdrawal of licenses or termination of contracts for company projects.

Of note, those most and uniquely impacted by corporate activities include women, human rights and environmental defenders, Indigenous Peoples, peasants and other people working in rural areas and minority groups. It is thus imperative that the draft LBI ensure access to effective remedies and strengthen prevention and protection of at-risk groups who regularly face corporate harm.

Finally, we also call on States to adopt policies in the process of the LBI that restrict the undue influence of corporations on decision-making – particularly given the evident conflict of interest. The negotiation process of the LBI to regulate corporate power is undermined by corporate capture of the UN, which is defined as the growing influence of corporate elites on government decision-making. We see this happening increasingly in different spaces at the UN. In the context of a new wave of bilateral and multilateral trade and investment agreements, we also urge the adoption of provisions in the LBI that dismantle current multistakeholder initiatives in multilateral governance spaces given their role in undermining democracy and human rights and put profit over people and the nature. Corporations have been given privileged access to our spaces and at the same time have captured governments nationally, particularly in the Global North, driving them to ignore the process to establish the LBI, and to push for initiatives that delay corporate accountability and promote profit-making agendas. Precedents for stopping corporate capture in UN decision-making spaces exist, such as throughout the process of the Framework Convention on Tobacco Control. We can, and we must, insist that policymaking be protected from corporate capture, so that the public interest – the voice and human rights of 99% of the population – prevails.

To ensure a just transition towards sustainable and fair societies, States urgently and globally shall regulate corporate accountability respecting the Human Rights Council process under Res. 26/9, in which several States, civil-society organizations, social movements and affected communities have invested knowledge, energy and many other resources. Human rights and the environment cannot wait any longer and we cannot allow corporate capture of our governmental decision-making processes to continue delaying the realization of our demands. We need a robust LBI centering people's demands for justice and accountability to be adopted as urgently as possible.

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