

## **Business & Human Rights Resource Centre contribution to open-ended intergovernmental working group on transnational corporations and other business enterprises**

*Second session, 24 - 28 October 2016*

[Business & Human Rights Resource Centre](#) continues to follow the debate on a proposed [binding treaty](#) with a section dedicated to the latest news, initiatives, blogs and commentaries on the issue (also available in [French](#) and [Spanish](#)). This section also follows the [sessions of the open-ended intergovernmental working group](#). Additionally, we have gathered contributions by experts in our [Debate the Treaty blog series](#) in an effort to engage stakeholders and promote constructive debate on the development of a treaty.

With the open-ended intergovernmental working group in its second year, an international binding treaty on business and human rights appears increasingly realisable. The discussion is increasingly about what form such a treaty would take, rather than about whether it is possible. In our [Debate the Treaty blog series](#), stakeholders have sought to identify and resolve the most contentious issues surrounding the development of a business and human rights treaty.

We believe that in order to achieve the most effective outcome, the treaty development process should:

- Be inclusive and participatory. Involvement of a wide range of stakeholders will increase ownership over the treaty, and greater sense of investment in its success. In particular, those affected by corporate abuses of human rights and human rights defenders should be at the centre of the process.
- Promote the narrative that the proposed treaty and the UN Guiding Principles on Business and Human Rights complement and strengthen each other, to ensure maximum participation amongst the governments, and from across the business and human rights movement.
- Be transparent. This will encourage trust between stakeholders and timely participation.

Below is a list of key materials representing the main viewpoints from stakeholders gathered in our [Debate the Treaty blog series](#). Some of the key areas identified which the open-ended intergovernmental working group is being asked to address include: participation in the treaty process; the scope of jurisdiction and access to remedy; the obligations of corporations; the substantive rights covered; and enforcement/oversight mechanisms. The open-ended intergovernmental working group has a unique opportunity to address some of these issues.

### **NGOs:**

[Hearing the voiceless: The treaty process must listen to those affected by corporate abuse](#)

Tchenna Maso, Movement of People Affected by Dams (Movimento de Atingidos por Barragens), 6 Oct 2015

- Recommendations on the need to have people affected by corporate abuses at the centre of the treaty development process.

[Human rights defenders must be at core of treaty process and outcomes](#)

Ben Leather, International Service for Human Rights, 12 Aug 2015

- Says that civil society participation should be enhanced in the treaty development process. Moreover, ensuring that human rights defenders can participate safely in the work of the open-ended intergovernmental working group is vital. The treaty should

also incorporate this, by reaffirming the State duties to protect and support defenders, and also reaffirming the business obligation to engage with and proactively protect defenders.

[Parent company liability: Could discussions around a treaty prompt States to do what they have so far resisted?](#)

Gabriela Quijano, Amnesty International, 7 Aug 2015

- Argues that the treaty could force states to place parent companies under an express legal duty of care toward those affected by their global operations, which would require companies to undertake due diligence. It should also reverse the burden of proof so it is up to the parent company to prove that it should not be liable for its subsidiaries' actions.

[Influence of corporations in treaty process would undermine affected communities' interests](#)

Kate Lappin, Asia Pacific Forum on Women, Law and Development (APWLD), 21 Jul 2015

- To ensure that the treaty process responds to the needs of communities and there is no conflict of interest, argues that companies should not participate in the elaboration process.

**United Nations:**

[A binding international instrument on business & human rights should safeguard civic space](#)

Maina Kiai, UN Special Rapporteur on freedom of assembly & association, 8 Sep 2015

- Argues that States are no longer the sole dominant actors and that international law must change to reflect this reality to protect rights to peaceful assembly and association.

**Governments:**

[The perfect, the good and unclear conflict lines](#)

Harriet E. Berg, Norwegian Government, 10 Nov 2015

- Argues that there is a need to strengthen the protection for human rights defenders and victims of corporate abuse. Concrete action on the ground, at national and international level, by all States, businesses and the UN is needed.

**Academics:**

[Including Corporate Criminal Liability for International Crimes in the Business and Human Rights Treaty: Necessary but Insufficient](#)

Nadia Bernaz, Middlesex University School of Law, 14 Oct 2015

- Encourages inclusion of corporate criminal liability for international crimes in the treaty to maximise its impact.

[Corporate Human Rights Obligations: Controversial but necessary](#)

Nicolás Carrillo-Santarelli, La Sabana University, 24 Aug 2015

- Argues for direct international corporate human rights obligations, which will neither weaken established human rights frameworks nor soft law initiatives.

[Regulatory initiatives on business & human rights: Where are the victims?](#)

Surya Deva, City University of Hong Kong, 24 Jun 2015

- Argues that the scope of the treaty and the substantive rights covered should be determined by the needs of victims.

**Business:**[Limiting the application of the treaty to certain corporate entities could leave victims without access to remedy](#)

Tom Mackall, Sodexo, 2 Sep 2015

- Urges that all human rights standards should be applied to all business entities in order to promote respect and enhance remedy.

[Intergovt. Working Group on proposed treaty needs to have an inclusive & consultative process](#)

Linda Kromjong, IOE, 12 Aug 2015

- Includes the key demands of business organisations: the process should strengthen the implementation of the UN Guiding Principles, address all companies and build on the UN "Protect, Respect, Remedy" framework, including respecting the established division of roles between state and companies

**Other recent key resources available on the site:**[The Proposed Business and Human Rights Treaty: Four Challenges and an Opportunity](#)

Sara McBrearty, King & Spalding LLP, 7 Jul 2016

- Argues that a clear objective is necessary. The content of corporate responsibility should be clearly delineated, and the exclusion of national corporations undermines the objective of protection from all corporate abuses of human rights. Also argues that corporate stakeholders should be included in the negotiation process.

[Options for shaping the UN Treaty on businesses and human rights](#)

CIDSE, 6 Jul 2016

- Says that a treaty could provide an opportunity to establish universal jurisdiction and help victims in the process of seeking justice in foreign courts. Also says the relationship between the treaty and Free Trade Agreements should be considered.

[African Civil Society Seeking a Treaty to Stop Corporate Abuse and Provide Real Remedies for Affected People](#)

African CSOs on a Binding Treaty, Nov 2015

- Argues that the treaty must focus on strengthening remedies, providing for civil, criminal and administrative relief; establishing a specialised international mechanism to address business & human rights cases; and requiring companies to establish grievance mechanisms. The treaty must also integrate extraterritorial obligations, and give special attention to stakeholders in conflict areas and human rights defenders.

[Event Summary: Towards a legally binding instrument on Business and Human Rights](#)

European Coalition for Corporate Justice (ECCJ), 2 Sep 2015

- Speakers argued that the treaty should be focused on access to remedy and corporate accountability. The treaty is an opportunity for victims to seek justice in an international court. Other speakers said that legally binding instruments and strong enforcement mechanisms are the only way to ensure adequate human rights due diligence and protections, and remedy for victims. The majority of speakers testified to the complementary relationship between the proposed treaty and the UN Guiding Principles.