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TIME TO ACT: SECURING A SUSTAINABLE FUTURE THROUGH CORPORATE ACCOUNTABILITY

The Relevance of the United Nations Legally Binding Instrument to Regulate the Activities of Transnational Corporations and Other Business Enterprises as a Structural Lever for Environmental Justice

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I INTRODUCTION

Planetary crises are driven largely by extractivist economic models and corporate practices that prioritize profit over human rights, ecological integrity, and care for life on earth. Extractive and industrial activities continue to degrade ecosystems, destroy biodiversity and climate, and undermine the means of human survival. They violate the enjoyment of the right to a clean, healthy and sustainable environment (RtHE) and interconnected rights to life, health, food, and water, *inter alia*. In far too many cases, people and entire communities suffer these harms without meaningful regulation, prevention, remedy, or access to justice that ensures holding corporations accountable.

> In Uganda, in August 2001, the Ugandan army brutally expelled more than 4,000 people from four villages in the Mubende district because the government had leased their land to Kaweri Coffee Plantation Ltd (Kaweri). Many of the displaced people have not recovered from this violent expulsion. They are still fighting for compensation today.[1] In Chile, in the city of Arica, a local community has been facing the devastating impacts of toxic waste dumping by a Swedish company, which happened more than 40 years ago. People continue to suffer severe health problems, and they have received little or no remediation.[2]

Over recent decades, environmental concerns have gained greater visibility in multilateral debates, at the same time United Nations (UN) member states and institutions, including through international human rights standards, have increasingly recognized the intrinsic link between human rights and environmental protection. The RtHE[3] has been affirmed by the UN General Assembly[4] and the Human Rights Council,[5] and reflected in evolving jurisprudence and authoritative interpretations by international and regional human rights bodies,[6] highlighting that environmental degradation constitutes systemic human rights harm.

Yet corporations remain among the principal drivers of ecological destruction, and significant gaps persist between normative recognition and enforceable regulation of corporate conduct. Recent deregulatory developments, including attempts to weaken human rights

1 FIAN International. (2025). *Kaweri Coffee Plantation in Uganda: Mubende District (Fact sheet)*. Available at: www.fian.org/files/is/htdocs/wp11102127_GNIAANVR7U/www/files/FIAN%20International%20Fact%20sheet-Kaweri%20case.pdf.

2 Office of the United Nations High Commissioner for Human Rights (OHCHR). (2021, June 7). *Chile: Nearly 40 years on, still no remedy for victims of Swedish toxic waste – UN experts*. Available at: www.ohchr.org/en/press-releases/2021/06/chile-nearly-40-years-still-no-remedy-victims-swedish-toxic-waste-un-expert.

3 Boyd, D. R. (2024). *Overcoming the weaknesses of international environmental law*. OHCHR. Available at: www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2024-04-22-stm-earth-day-sr-env.pdf.

4 United Nations. (2022, July 28). *UN General Assembly declares access to clean and healthy environment a universal human right*. UN News. Available at: news.un.org/en/story/2022/07/1123482.

5 United Nations. (2021, October 8). *Access to a healthy environment, declared a human right by UN rights council*. UN News. Available at: news.un.org/en/story/2021/10/1102582.

6 Association of Southeast Asian Nations (ASEAN). (2025, October 26). ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment. Available at: asean.org/wp-content/uploads/2025/10/5.-ASEAN-Declaration-on-the-Right-to-a-Clean-Safe-Healthy-and-Suitable-Environment.pdf.

and environmental safeguards in instruments such as the European Union (EU) Corporate Sustainability Due Diligence Directive (CSDDD),[7] underscore the risk that political compromise and corporate influence can dilute environmental obligations and entrench weak compliance approaches that perpetuate corporate impunity.

Since the 1970s, civil society organizations and social movements – particularly from the Global South – have exposed state complicity and corporate involvement in human rights violations and abuses, demanding binding international regulation to challenge corporate impunity. However, international responses shifted toward voluntary, multi-stakeholder initiatives involving corporate actors, including the UN Global Compact[8] and the UN Guiding Principles on Business and Human Rights (UNGPs),[9] adopted in 2011.

Although frequently cited in global policy discussions, these frameworks have proven inadequate to deliver accountability. Their non-binding nature, failure to impose enforceable and extraterritorial obligations, and the absence of effective investigative, sanctioning, and remedial mechanisms severely limit their impact. In response, civil society and social movements mobilized to reinforce calls for an international legally binding instrument in 2013.

With political support from Ecuador and South Africa, these efforts culminated in Human Rights Council Resolution 26/9[10] in 2014, which established an open-ended intergovernmental working group (OEIGWG) mandated to elaborate a legally binding instrument on transnational corporations and other business enterprises (LBI). Since then, the OEIGWG – the only forum within the UN human rights system explicitly mandated to develop a comprehensive and binding regulatory framework on corporate accountability – has been shaped by tensions between the progressive ambitions and substantive proposals of many Global South states and civil society actors, and the efforts of some industrialized states and corporate interests to boycott, delay, narrow or weaken the text of the LBI and the process. Those representing corporate interests have also aimed to weaken human rights protection on key provisions such as legal liability, limit extraterritoriality, and delay other substantive agreements. The process is currently in its 12th year, with an Updated Draft consisting of 24 articles that formed the basis of annual negotiations of the OEIGWG for its 9th, 10th and 11th sessions.[11]

As climate disruption, biodiversity loss, pollution, and toxic exposure continue to worsen and intensify globally, the international debate on the ecological and human rights obligations of business enterprises, especially of transnational corporations, is gaining renewed urgency. This is especially the case in a context in which natural resources, climate and ecosystems

7 European Coalition for Corporate Justice (ECCJ). (2025, December 16). *EU's "Deregulation" agenda claims its first victim: Corporate Sustainability Due Diligence Directive gutted (Press release)*. Available at: corporatejustice.org/news/press-release-eus-deregulation-agenda-claims-its-first-victim-corporate-sustainability-due-diligence-directive-gutted/

8 For more information, please visit: unglobalcompact.org/.

9 Available at: www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

10 Available at: documents.un.org/doc/undoc/gen/g14/082/52/pdf/g1408252.pdf.

11 For more information, please see: www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc.

are increasingly affirmed as common goods[12] and fundamental rights for the continuation of life. In this scenario, the negotiations of the LBI have gradually reflected the historical demands and realities of the Global Majority regarding environmental accountability and climate justice.

The challenge now is coherence, ensuring that the binding obligations of the RtHE and effective access to justice and remedy are reflected across other governance spaces.[13]

12 For more information, please see: Arrojo Agudo, P. (2024). *Water and economy nexus: managing water for productive uses from a human rights perspective: Report of the Special Rapporteur on the human rights to safe drinking water and sanitation*. Human Rights Council. Available at: documents.un.org/doc/undoc/gen/g24/127/91/pdf/g2412791.pdf.

13 FIAN International. (2025, October 8). *No Profit Without Accountability – For People and the Planet*. Available at: www.fian.org/en/corporate-accountability-people-and-planet-environmental-analysis-lbi/.

II THE LEGALLY BINDING INSTRUMENT AS A STRUCTURAL LEVER FOR ENVIRONMENTAL JUSTICE AND A JUST TRANSITION

No binding global legal framework[14] exists to regulate the activities and value chains of corporations. This allows them to escape accountability by exploiting jurisdictional loopholes and weak regulations.

> In Senegal, as a result of massive mining operations, affected communities are confronted with forced evictions, pollution, destruction of their livelihoods and the impossibility to continue cultivation.[15] In India, grassroots communities have been protesting peacefully for more than 20 years against forceful land grabbing of community lands, the environmental degradation that follows and reprisals against human rights defenders.[16] In Brazil, the developments of agribusiness and land speculation are leading to the destruction of livelihoods and the erosion of local biodiversity of rural and Indigenous communities in the MATOPIBA region (Maranhão, Tocantins, Piauí, and Bahia). Land grabbers are backed by money coming from abroad, in particular from pension funds in the USA and Europe.[17]

Considering this reality, a number of UN Special Rapporteurs have recommended that negotiations on the LBI move forward.[18] In this context, the LBI process matters not only because it seeks to close legal accountability gaps, but because the LBI presents an opportunity to turn the right to a clean, healthy and sustainable environment into enforceable obligations – particularly in relation to corporate actors and transnational value chains. In other words, the LBI functions as a structural lever: it can strengthen environmental justice not only by recognizing the right to a clean, healthy and sustainable environment, but by strengthening avenues to guarantee prevention, liability, jurisdiction, and remedies.

The LBI process, as demanded by civil society, seeks to address corporate impunity and human rights abuses and violations in a holistic manner, grounded in the lived realities of affected individuals and communities and recognizing the interdependence between people

14 FIAN International. (2023, October 19). *Time to hold corporations accountable on human rights and environment*. Available at: www.fian.org/en/time-to-hold-corporations-accountable-on-human-rights-and-environment/.

15 FIAN International. (2024). *Extractivisme et dépossession au Sénégal: les cas de Koudiadiène, Pambal et Diogo*. Available at: www.fian.org/files/is/htdocs/wp11102127_GNIAANVR7U/www/files/Senegal_FR_Layout_fin_Oct_2024(2).pdf.

16 BankTrack. (2025, November 12). *JSW Utkal Steel plant and captive coal power station (India)*. Available at: www.banktrack.org/project/captive_coal_power_at_jsws_utkal_steel_plant.

17 FIAN International. (2018, July 4). *The Human and Environmental Cost of Land Business (Matopiba): The case of MATOPIBA, Brazil*. Available at: www.fian.org/en/the-human-and-environmental-cost-of-land-business-matopiba-3/.

18 According to the Working Group on Peasants and other people working in rural areas and Michael Fakhri, the Special Rapporteur on the right to food: "the experts urged all Member States to prioritise the finalisation of a legally binding treaty to regulate corporations and financial institutions and hold them accountable for human rights violations and abuses." For more information, please see: OHCHR. (2025, October 16). *UN experts urge binding accountability for agribusiness to safeguard peasants' rights and global food security (Press release)*. Available at: www.ohchr.org/en/press-releases/2025/10/un-experts-urge-binding-accountability-agribusiness-safeguard-peasants; and
Boyd, D. R. (2022). *The right to a clean, healthy and sustainable environment: non-toxic environment: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/49/53, para. 89 e iii)*. Available at: https://docs.un.org/en/a/hrc/49/53.

and the ecosystems they rely upon. A holistic approach is essential to addressing climate injustice, protecting biodiversity, and confronting the economic regimes that contribute to the triple planetary crisis. Embedding corporate activity within a binding regulatory framework grounded in human rights accountability is also central to advancing a just and equitable transition. Such a transition must ensure the realization of all human rights, including the right to a clean, healthy and sustainable environment, for present and future generations, in accordance with principles of inter- and intragenerational justice and common but differentiated responsibilities and respective capabilities. Under international human rights law, states are required to take positive steps toward the progressive realization of human rights and avoid actions that cause their deterioration, including false solutions that fail to address the root causes of the planetary crises.

Environmental Provisions in the 11th Session of the Open-Ended Intergovernmental Working Group

Environmental language in the LBI process was substantially removed from the Third Draft of the instrument. Many states and civil society actors have asked for its subsequent re-insertion, both as a stand-alone theme and as part of core obligations, especially under human rights due diligence, protection of affected communities, and extraterritorial accountability. In the 11th session of the OEIGWG (held in October 2025), many states advanced progressive environment-related proposals, in particular, by calling for the explicit inclusion of the RtHE within the definition of human rights abuse and by strengthening remedy provisions to include environmental remediation and ecological restoration.[19] The session confirmed growing acceptance of environmental relevance in the LBI process, while also revealing tensions around the LBI's capacity to reshape corporate accountability across intersecting regimes.[20]

Operationalizing the Right to a Clean, Healthy and Sustainable Environment

The LBI can play a pivotal role in operationalizing states' obligations to respect, protect, and fulfill the right to a clean, healthy and sustainable environment.[21] Strengthened prevention obligations through the LBI could move beyond corporate-controlled due diligence models by reinforcing meaningful participation, Free, Prior and Informed Consent, and robust environmental, gender and human rights impact assessments. These measures would

19 The clearest proponents of this stronger environmental approach included France, Mexico, Panama, Brazil, Chile, Honduras, Egypt, Cameroon, and Palestine, with Palestine also proposing many other textual changes linking environmental harm, remedy, and Indigenous environmental governance together. Meanwhile, some States such as the Russian Federation and Saudi Arabia suggested deleting some stronger environmental insertions. For more information, please see: Vázquez Bermúdez, M. (2025, October 24). *Report on the eleventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (A/HRC/61/XX)*. Available at: www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-report.pdf; and
OHCHR. (n.d.). *Updated draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (11th session textual proposals)*. Available at: www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-textual-proposals-lbi.pdf

20 Honduras, Brazil and Palestine suggested a preambular paragraph to clearly establish the primacy of human rights obligations and pro-persona principle over other governance regimes (including trade, finance, taxation, development and environmental frameworks) while Panama noted it was "not in a position to support" such a proposal.

21 ESCR-Net. (2024, October 21). *The Right to a Clean, Healthy, and Sustainable Environment: A Pathway to Address the Climate Crisis.* Available at: www.escr-net.org/resources/the-right-to-a-clean-healthy-and-sustainable-environment-a-pathway-to-address-the-climate-crisis/.

enable communities to exercise their "Right to Say No" and their right to self-determination.[22] Such provisions would enable and require States to take timely action to modify, suspend, halt or refrain from trade, investment, or concession agreements that threaten livelihoods, contaminate land and water, undermine biodiversity, or contribute to climate change.[23]

> In Colombia, in Tolima, the expansion of extractive and infrastructure projects linked to transnational conglomerates has affected strategic water bodies like the Saldaña River.[24] At the same time, 'green transition' initiatives, such as carbon markets in the Bosque de Galilea, are moving forward, enabling repression and criminalization of human rights defenders without guarantees of Free, Prior and Informed Consent or effective mechanisms for monitoring and redress.[25] Unchecked operations of extractive industries like copper and zinc mining in the Bor region of Serbia are causing severe environmental pollution, including the presence of heavy metals and other hazardous substances in water, air, and soil, damage to local agriculture, expropriation and displacement of communities. Adequate responses from government institutions are lacking.[26]

The text of the Updated Draft of the LBI also addresses structural barriers and power imbalances faced by individuals or communities to access justice through mechanisms such as the reversal or dynamic allocation of the burden of proof and access to information for those affected. These measures would alleviate the disproportionate evidentiary burden currently borne by affected communities, who frequently lack access to corporate data and information, and the capacity to obtain it. By incorporating these procedural guarantees into their domestic law and procedures, States would strengthen the protection and fulfilment of the right of affected persons and communities to access justice in cases of environmental harm.

Moreover, the LBI would clearly establish strict and joint civil, administrative and criminal liability for parent companies, controlling entities and lead firms within corporate groups and value chains. Combined with effective sanctions and pathways for remedy, including environmental remediation, restoration and guarantees of non-repetition, this would help ensure that those exercising decisive economic control are held accountable for human rights violations, as well as environmental harm. Additionally, the current draft of the LBI specifically recognizes and incorporates rights for defenders and obligations on States to

22 FIAN International. (2022, May 29). *Business due diligence and related States obligations in the context of corporate accountability*. Available at: www.fian.org/en/business-due-diligence-and-related-states-obligations-in-the-context-of-corporate-accountability-2/.

23 The promotion and adoption of legal frameworks that uphold Nature as a subject of rights and the protection of ecosystems to exist, thrive, and regenerate through enforceable legal mechanisms is a vital foundation for the realization of the RtHE. Several countries (such as Ecuador, Bolivia, Colombia, Panama and New Zealand, amongst others) have already taken pioneering steps in this direction, integrating the Rights of Nature into their constitutions and jurisprudence.

24 Perdomo, K. (2024, May 16). *Proyecto de explotación minera podría acabar con el rio de Saldaña y los cultivos de arroz*. Emisora Ondas de Ibagué - 1470 AM. Available at: ondasdeibague.com/noticias/tolima/57017-proyecto-de-explotacion-minera-podria-acabar-con-el-rio-de-saldana-y-los-cultivos-de-arroz.

25 Dejusticia. (2024, July 25). Green grabbing in the Galilea Forest. Available at: www.dejusticia.org/en/green-grabbing-in-the-galilea-forest/.

26 FIAN International. (2025, October 7). *UN experts express concerns over Serbia copper mining*. Available at: www.fian.org/en/category/-serbia/.

protect them. In doing so, this instrument could be one of the few binding instruments that could specifically provide enforceable protection for human rights defenders (including environmental human rights defenders), Indigenous Peoples, people working in rural areas and other affected communities who are at the frontline of resisting corporate abuses and exercising their right to defend rights.[27] This includes also the obligation to continually assess, address and mitigate risks to human rights defenders and to include them, meaningfully, in consultations related to business operations.

Furthermore, the recognition of extraterritorial jurisdiction under the LBI would enable states in which parent or controlling companies are domiciled to ensure access to effective remedies for communities affected by environmental harm abroad, particularly where remedies are unavailable or ineffective in host states.

27 International Service for Human Rights (ISHR). (2024, June 19). *Declaration on Human Rights Defenders +25: A supplement to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: 25 years on*. Available at: ishr.ch/defenders-toolbox/resources/declaration-25/.

III ADVANCING ACCOUNTABILITY IN LEGAL FRAMEWORKS

Because of the lack of binding laws or their enforcement, corporations have been able to shape public policy, undermine regulation, and influence standard settings and judicial decisions on human rights and environmental climate justice. Many environmental governance mechanisms still rely heavily on state reporting and cooperation, while lacking enforceable pathways to ensure corporate accountability, effective legal liability, and rights-holders-centered remedies when environmental damage occurs.[28] These gaps are compounded by the reality that environmental harm frequently crosses borders through supply chains, finance flows, and overly complicated corporate group structures. This results in affected communities facing jurisdictional barriers, weak international cooperation on evidence, and limited legal routes to obtain justice.

> In Iraq, extensive evidence shows that war-related environmental contamination, primarily from heavy metals in ammunition, open-air burn pits and explosive detritus, has caused lasting harm to public health, including birth defects, cancers and miscarriages among civilian populations.[29] Lithium extraction in Argentina, Bolivia, and Chile—the so-called "Lithium Triangle"—has deeply impacted Indigenous Atacameño communities and ecosystems, sparking legal battles over the right to Free, Prior, and Informed Consent. Also in Zimbabwe, communities have faced forced relocations, water contamination, and labor abuses linked to lithium mining, while in the Democratic Republic of Congo, children continue to work under hazardous conditions in cobalt and coltan mines.[30] In the Pacific, civil society and the governments of Fiji, Vanuatu, Papua New Guinea, Solomon Islands, and New Zealand, are among those who have called for and set moratoriums on deep-sea mining citing impacts to food supply, fish catch and marine ecosystems.[31]

For too long, corporations have used voluntary commitments and soft guidelines to deflect accountability. Conferences of the Parties (COPs) to the UN Framework Convention on Climate Change (UNFCCC), influenced by fossil fuel lobbyists, have highlighted false solutions instead of driving real transformation.[32] For example, "green grabs" in the name of climate

28 United Nations Development Programme (UNDP). (2022). *Environmental justice: securing our right to a clean, healthy and sustainable environment*. Available at: www.undp.org/sites/g/files/zskgke326/files/2022-06/Justice-Environmental%20Tech%20Report%2001%5B36%5D_0.pdf.

29 Rubaii, K. (2020, September 22). *Birth defects and the toxic legacy of war in Iraq. Middle East Research and Information Project*. Available at: merip.org/2020/09/birth-defects-and-the-toxic-legacy-of-war-in-iraq.

30 ESCR-Net. *Input to the United Nations Special Rapporteur on Climate Change addressing human rights in the life cycle of renewable energy and critical minerals*. Available at: www.escr-net.org/wp-content/uploads/2025/05/ENG-Joint-submission_critical-minerals-and-renewables_SR-CC_FINAL_29April2025.pdf.

31 *Ibid.*

32 Asia Pacific Forum on Women, Law and Development (n.d.). *False solutions briefer*. Available at: apwld.org/wp-content/uploads/2023/12/FALSE-SOLUTIONS-BRIEFER-Final.pdf.

and biodiversity protection have accelerated, as land is appropriated for market-driven climate mitigation schemes such as carbon offsets and biodiversity markets. These schemes, while marketed as climate solutions, often dispossess communities and undermine their stewardship of territories and ecosystems. Such stewardship has been proven to result in lower deforestation rates and higher biodiversity.[33]

International human rights law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) requires states to regulate, monitor, investigate, enforce, and provide effective remedies for the actions or omissions of non-state actors under their jurisdiction. This includes both adjudicative and regulatory jurisdiction, and is further supported by standards on extraterritorial obligations (ETOs), as set out in the Maastricht Principles.[34] In 2022, the UN General Assembly reaffirmed the right to an effective remedy and pointed out that it is vital to protecting the right to a clean, healthy and sustainable environment.[35] The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes emphasizes that

> *remedies not only protect victims but serve to deter violations and uphold the legal order that the treaties create. Thus, comprehensive remedies in toxics cases will often involve more than compensation, including cessation of releases of pollutants, non-repetition, clean-up of contaminated sites, respect for the inalienable right to truth and transitional justice mechanisms.*[36]

Recent developments in international jurisprudence – especially the Advisory Opinion (AO) of the International Court of Justice (ICJ) on the obligations of states in respect to climate change[37] and the Advisory Opinion (AO) of the Inter-American Court of Human Rights (IACtHR) on climate emergency and human rights[38] – clarify States' duties to regulate private actors, enforce compliance, and ensure effective remedies. Together, they reinforce key LBI-relevant elements: prevention and due diligence, regulation of private actors, enforcement and sanctions, access to remedy, value chains and parent company responsibility, and broader jurisdictional reach. While the AO of the ICJ does not establish direct corporate obligations under international law, it strengthens corporate accountability through a stringent due dil-

33 For more information, please see: Morgera, E. (2025). *The imperative of defossilizing our economies: Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change (Human Rights Council, Fifty-ninth session, 16 June–11 July 2025; Agenda item 3)*. Available at: docs.un.org/en/A/HRC/59/42.

34 ETO Consortium (2012). *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*. Available at: www.etoconsortium.org/wp-content/uploads/2023/01/EN_MaastrichtPrinciplesETOs.pdf.

35 For more information, please see: United Nations General Assembly. (2022, July 28). *The human right to a clean, healthy and sustainable environment (A/RES/76/300)*. Available at: docs.un.org/en/A/RES/76/300.

36 Orellana, M. (2025, August 8). *Guidelines on access to justice and effective remedies in the context of toxics: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/60/34)*. Available at: www.ohchr.org/en/documents/thematic-reports/ahrc6034-guidelines-access-justice-and-effective-remedies-context-toxics.

37 International Court of Justice (ICJ). (2025, July 23). *Advisory Opinion*. Available at: https://www.icj-cij.org/case/187.

38 Inter-American Human Rights Court. (2025, May 29). *Advisory Opinion AO-32/25*. Available at: www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf.

igence standard requiring states to regulate private conduct.[39] It also directly links climate and environmental protection to the effective enjoyment of human rights and identifies the regulation of private actors as part of the measures States must adopt, alongside standards and legislation.[40] The AO of the IACtHR goes further by explicitly addressing corporate obligations and spelling out regulatory expectations for states.[41] It recalls that states must adopt measures to prevent human rights violations committed by state and private corporations, as well as investigate and punish them and guarantee reparation when violations occur, noting that this is ultimately an obligation to be fulfilled by corporations and regulated by states. The AO of the IACtHR affirms that companies have "obligations and responsibilities" regarding climate change and its human rights impacts, and that states must establish these duties in domestic law and ensure compliance.[42]

Importantly, the IACtHR specifies that states should enact legislation requiring companies to carry out human rights and climate due diligence throughout the entire value chain.[43] On enforcement and remedy, the IACtHR stresses that oversight must include the ability to investigate, prosecute, and sanction corporate non-compliance.[44] It also highlights the need to address corporate structures, enabling states to assign responsibilities to parent companies or entities exercising control, including for emissions caused by subsidiaries or controlled companies, introducing the "polluters pay principle".[45]

Taken together, these developments confirm what the LBI can deliver: binding regulation of corporate conduct to prevent harm and secure access to justice and remedy in transnational contexts.

39 ICJ. *Supra* note 37. The ICJ confirms that adaptation measures are relevant to assessing due diligence compliance and stresses that the necessary "rules and measures" must regulate the conduct of public and private operators, supported by effective enforcement and monitoring mechanisms (para. 282). It further clarifies that the obligation to prevent, reduce, and control pollution is an obligation of conduct and that due diligence is "stringent," requiring legislative measures, administrative procedures, and enforcement mechanisms to regulate relevant activities (para. 347). It further confirms that a State may incur responsibility for failing to exercise due diligence - for example, by not adopting the necessary regulatory and legislative measures to limit emissions caused by private actors under its jurisdiction (para. 428).

40 *Ibid*. para. 403

41 Inter-American Human Rights Court. *Supra* Note 38. (para. 345)

42 *Ibid*. para. 346

43 This includes disclosure of emissions, emissions reduction measures, and safeguards against greenwashing and undue corporate influence (para. 347). It also supports differentiated obligations, including stricter duties for businesses with higher contributions to emissions and climate harm (para. 348).

44 This includes measures such as cessation of unlawful activities and effective compensation for harm to the global climate system, alongside remedies for other human rights violations (para. 356).

45 para. 350. The IACtHR AO also recognizes certain environmental law instruments as jus cogens, implying enforceability against all actors, including corporations (para. 291).

IV STRENGTHEN ENFORCEABILITY FOR PEOPLE AND THE PLANET

In spite of an increasingly robust international human rights and environmental legal framework, when it comes to trade and investment agreements, transnational corporations are often granted rights that are stronger than local communities' tenure and human rights, without including any corporate obligations, especially their obligations to respect and comply with remedies.[46] Combined with Investor-State Dispute Settlement (ISDS) mechanisms that accompany trade, investment treaties and contracts, these rights allow investors to evade domestic liability. This has excused corporations from local labor and environmental laws, leading to an increase in human rights violations in global supply chains.

In this context, the progressive proposals in the Updated Draft of the LBI (in its track changes version) made by States in the 9th, 10th and 11th sessions[47] provide an operational blueprint that environmental regimes often lack. Article 6 anchors mandatory human rights due diligence, including environmental and health impact assessments. Article 7 strengthens access to remedy, helping ensure that violations linked to environmental degradation trigger effective reparations. Article 8 reinforces the need for robust legal liability frameworks along transnational corporate structures and value chains for corporate-related harms. Article 9 addresses the core cross-border enforcement problem by expanding jurisdictional bases linked to corporate domicile and transnational harm. Article 12 enables the practical cooperation needed to pursue cases across jurisdictions through mutual legal assistance. Together, these provisions can help close the gap between environmental recognition and real-world enforcement by creating a coherent accountability architecture that makes corporate obligations – and access to justice – actionable and ensures their fulfilment beyond national borders.

The LBI process is not an isolated negotiation. It is part of a broader transformation towards coherent global governance that protects both people and the planet affirming that environmental justice and human rights are inseparable, and that both require dismantling corporate impunity and establishing binding obligations for those most responsible for the crises. Other processes related to sectors in which corporations play a powerful role include, among others: negotiations related to an international legally binding instrument on plastic pollution, including in the marine environment;[48] the Global Framework on Chemicals – For a Planet Free of Harm from Chemicals and Waste (GFC);[49] the COPs related to the Rio Conventions;[50] and the COPs related to the Basel, Rotterdam and Stockholm Conventions.[51]

46 Ordered by state-based complaint mechanisms (administrative, judicial and quasi-judicial).

47 OHCHR. *Supra* note 11.

48 For more information, please visit: https://www.unep.org/inc-plastic-pollution.

49 For more information, please visit: https://www.unep.org/global-framework-chemicals.

50 For more information, please visit: rioconventions.org/.

51 For more information, please visit: http://www.brsmeas.org/

The LBI process can inspire such processes,[52] for example, to include measures to sanction, divest, restrict trade, and implement legal consequences against corporations that aid and abet genocide, war crimes, and other human rights atrocities and violations.[53] The challenge now is to carry the momentum from standard setting and jurisprudence in the human rights system into spaces where environmental and human rights futures are decided and to ensure that growing recognition of the RtHE across governance spaces is translated into enforceable and coherent obligations for states and corporations alike.

The LBI process opens up a historic path to confront corporate power, to ensure accountability across borders and sectors, to establish transnational and intergenerational responsibilities and obligations and to contribute to a just transition grounded in human rights, ecological protection, and the primacy of people and planet over profit.

52 ESCR-Net. *COP30 Policy Brief - Centering Peoples-Led Solutions: Our Common Agenda for a Decolonized Climate Future*. Available at: www.escr-net.org/resources/cop-30-policy-brief-centering-peoples-led-solutions-our-common-agenda-for-a-decolonized-climate-future/.

53 ESCR-Net. (2025). From Impunity to Accountability: Binding Rules for Human Rights and Climate Justice. Available at: www.escr-net.org/news/2025/binding-rules-human-rights-climate-justice.

V KEY ADVOCACY MESSAGES AND RECOMMENDATIONS

FOR STATES:

- Constructively participate and strengthen the Updated Draft of the legally binding instrument on transnational corporations and human rights by ensuring that it establishes clear obligations for corporations and states, liability across jurisdictions, and effective remedies for affected communities;
- Ensure the strongest protection of human rights, the environment, frontline communities and human rights defenders;
- Embed the Advisory Opinion on the Obligations of States in respect of Climate Change of the International Court of Justice, which formally recognized the right to a clean, healthy and sustainable environment as a stand-alone human right by aligning national environmental legal frameworks;
- Integrate into domestic law stringent human rights due diligence, liability and other prevention mechanisms grounded in the right to a clean, healthy and sustainable environment, thereby building binding systems of accountability;
- Ensure that environmental policies genuinely reflect and serve the needs and priorities of those most impacted by environmental degradation;
- Champion cross-regime coherence at UNFCCC COPs and other UN forums, sessions, and processes;
- End corporate capture of decision-making spaces.

FOR CIVIL SOCIETY INCLUDING TRADE UNIONS:

- Center the voices of grassroots communities and social movements as essential actors and promote community-led and people-centered solutions to the ecological crisis;
  Build coalitions across movements (human rights, climate, biodiversity, environment) and support the connection of cross-movements with the LBI process;
- Leverage the language of the legally binding instrument and jurisprudence on the right to a clean, healthy and sustainable environment in environmental justice advocacy, and share information about this instrument in relevant spaces;
- Monitor how states and corporations operationalize environmental obligations.

FOR INTERGOVERNMENTAL AND UN BODIES:

- Ensure coordination between human rights and environmental governance processes in line with the most progressive standards for protection and continue advancing human rights and environmental standards according to the realities of the communities most affected by the triple planetary environmental crises;
- Incorporate treaty-based accountability principles including legal consequences against corporations into implementation of environmental standards.

Report in ENGLISH

Informe en ESPAÑOL

Rapport en FRANÇAIS

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FIAN International is a human rights organization that has been advocating for almost 40 years for the realization of the right to food and nutrition. FIAN works in over 50 countries all over the world with national sections and with a broad network of civil-society organizations, social movements, affected communities and other actors.

The **FES** office in Geneva serves as a liaison office between UN agencies, other Geneva-based international organizations and FES field offices as well as partners in developing countries to strengthen the voice of the Global South. It contributes to the debates in "International Geneva" on trade and sustainable development, decent work and social policies, human rights, economic and social rights in particular.