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## COMPANIES BEHAVING BADLY

Reining in corporate misconduct on human rights and the environment

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Victor Barro/Friends of the Earth International

**Concerns over harmful business conduct are driving the push for a robust international treaty to protect human rights from corporate violations. 6**



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ECOLOGY

# Making Erhai Lake bloom again

## A story of China's ecological transformation

The restoration of the once heavily polluted Erhai Lake in China's Yunnan province is the fruit of a guiding vision that sees protection of the environment as essential to, not at odds with, economic prosperity.

**Tings Chak**

Mx. Granger

**Erhai Lake.**

ON a clear morning in June 2023, I arrived in the city of Dali, located in China's southwestern province of Yunnan, and was received by He Licheng, a local resident and farmer from nearby Gusheng Village. Like others of older generations of the region, He recalled how the pristine Erhai Lake of his childhood in the 1970s and 1980s had become so heavily polluted by the 1990s and 2000s that its signature three-petal flowers, known locally as *haicaihua* (*Ottelia acuminata*), had stopped blooming.

Because the plant is extremely sensitive to pollution, its presence or absence is considered a biological indicator of water quality in the region. Due to a combination of factors in the reform and opening up period – including economic development, the rise of pesticide and fertiliser use with the 'Green Revolution', population growth, and increased tourism and migration – water quality within the Erhai basin steadily deteriorated. Looking back at the situation a decade ago, in 2013, Erhai Lake was experiencing large-scale outbreaks of blue-green algae, with the water quality deemed unsuitable for human contact.

By the time of my visit a decade later, though, Dali Bai Autonomous Prefecture had been fundamentally transformed. As part of the central government's targeted poverty alleviation campaign, launched in 2013 and completed in 2020, all 11 poverty-stricken counties in the prefecture, comprising 34 townships and 541 villages, were lifted out of extreme poverty.

In total, 413,100 people from Dali Prefecture exited extreme poverty in this campaign, part of the nearly 99 million people who did so across the country. All reached the 'one income, two assurances and three guarantees' standard of living, meaning that (i) their income exceeded a minimum level, (ii) they were assured food and clothing, and (iii) they were guaranteed basic medical services, safe housing with drinking water and electricity, and free education. Alongside the targeted poverty alleviation campaign of Xi Jinping's presidency, intensive environmental protection efforts turned the waters of Erhai Lake clean and potable again after a decades-long battle.

Already in the late 1990s, problems such as algal blooms were becoming apparent, necessitating the first measures, which included prohibiting motorised fishing boats and nets and the banning of phosphorus-containing detergents. However, these measures could not keep up with the pace of pollution and led to an economic downturn as well. In the early 2000s, Pan Yue took office as the Vice Minister of the Ministry of Environmental Protection – currently, he is the head of the National Ethnic Affairs Commission. As one of the youngest vice ministers ever, Pan transformed the country's approach to environmental impact assessment, halting some of the largest projects totalling 112 billion yuan in investments and placing huge fines on violators. In a 2007 speech to a group of young students, he stated that 'environmental pollution has severely constrained economic growth' and that 'social injustice leads to environmental injustice, which in turn exacerbates social injustice'. Pan saw the protection of the environment as being essential to – not at odds with – China's economic growth.

It was during that time that Professor Kong Hainan, upon returning from his studies in Japan, led a team from Shanghai Jiao Tong University to study the polluted Erhai Lake. The findings and reports they filed led to the State Council approving a national water pollution control and treatment project in 2006. Erhai Lake became a key testing ground for Kong's team, which discovered the most significant source of pollution to be the cultivation of a local type of single-bulb garlic on the shores of the lake. When the local government began to restrict these activities to areas beyond 200 metres from the shoreline, farmers were encouraged to plant other income-generating crop varieties and decrease or replace the use of chemical fertilisers.

Building a consensus among local growers was not an easy task and required the combined efforts of the whole community, with scientists, Communist Party of China (CPC) members, teachers, doctors and other public officials to lead by example and ask their relatives to do the same. Kong, for example, personally communicated with the media, went door-to-door to talk with residents, heard their concerns, and convinced them that threats to the health of the lake ultimately impacted the long-term livelihood of all the residents.

Kong is among the many scientists who have made it their task to ensure the restoration of the lake, which, in turn, ensures that local government policies and measures are scientifically guided. For the last 15 years, China Agricultural University has been exploring a 'Science and Technology Courtyard' model where graduate students are sent to the frontlines of agricultural production, living, working and producing alongside local peasant farmers. Together, they were able to identify core problems, such as pollution sources, address practical issues at the grassroots level, and innovate to find new solutions, such as biofertilisers and pesticides. This day-to-day trust-building has been a hallmark of China's rural campaigns, from poverty alleviation to rural revitalisation efforts.

**The Chinese government's poverty alleviation campaign has lifted nearly 99 million people out of extreme poverty.**

The life trajectory of He Licheng, the local resident who received me during my visit, has been completely intertwined with that of Erhai Lake. He has been directly impacted by both the pollution and the waves of the government's environmental measures of the past decades. Growing up in Gusheng Village, he earned his income through fishing and fish farming. In the mid-1990s, after the government ban on motorised fishing boats, he was forced to sell his boat for scrap metal. When self-built fishponds were prohibited, he moved to look for work elsewhere and returned a few years later to open a guesthouse after the government's 'village-to-village' project brought roads to his doorstep. Later, his house was among the 1,804 households that were slated for relocation to a nearby community to restore the area he lived in back to wetlands. Finally, in 2021, he contracted a piece of land in his home village to pursue rice and rapeseed farming under the guidance of the Yunnan Agricultural Reclamation Group. At the end of this long ordeal, he expressed his pride in contributing to protecting this collective research and is in the process of being a candidate member of the CPC.

The restoration of Erhai Lake is a concrete example of China's ecological transformation of recent years, which aims to correct the environmental damage that came with rapid economic expansion while setting a new course in the transition to a new energy economy. In recent years, President Xi Jinping has emphasised the concept of 'ecological civilisation' as one of the key elements of China's socialist modernisation and promoted 'green mountains and clear waters', a guiding vision that sees the protection of the environment as a necessary foundation to economic and social prosperity, rather than being at odds with it. Erhai Lake is a good example of how a central government vision gets translated into practice at the local community level, combining scientific investigation, Party-led mobilisation and grassroots democracy. ◆

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ECONOMICS

# The gig economy's false promise

Touted as a path to empowerment, Africa's gig economy is a digital twist on old patterns of labour exploitation – but workers are fighting back.

**Jennifer D. Daniel**

IN a small corner of Lagos, Peter, a 29-year-old ride-hailing driver, checks his app for new fares. The ping comes through. Another trip. But after commissions, fuel costs and maintenance, how much does he really take home? Some weeks, it barely covers his rent. And yet, on paper, he is the face of Africa's rising gig economy – the entrepreneur, the hustler, the self-made worker.

Across Africa's urban centres – Lagos, Johannesburg, Nairobi – the streets hum with motorbikes, ride-hailing cars and app-based delivery workers, all chasing what has been marketed as a new wave of economic empowerment. Proponents of the gig economy tell a seductive story: By lowering barriers to entry, technology has liberated workers, offering them flexible schedules and a pathway to financial independence. But scratch beneath the surface and another reality emerges – one in which gig workers are caught in a system as exploitative as the colonial-era labour structures that once defined the continent.

Consider the much-lauded ride-hailing sector. Championing flexible hours and easy onboarding, these platforms initially appear to liberate workers from the joblessness that afflicts so many young people across Africa. Yet listen to the drivers themselves and you'll hear a consistent refrain: fluctuating commissions, price surges that benefit the platform but not the worker, and no safety nets if they fall ill or their cars break down.

For many, this isn't the independence they were promised – it's a digital twist on indentured labour. In much the same way that colonial mining companies trapped workers in debt cycles through company-owned housing and provisions, today's ride-hailing giants encourage drivers to take out car or motorbike loans, only for many to realise they will never break even. Platforms set the terms, dictating rates and slashing driver earnings at will. If a driver dares to protest? The algorithm can deactivate them overnight – no severance, no recourse, no explanation.

It is telling that in the last few years, Uber and Bolt drivers in Kenya, Nigeria and South Africa have staged repeated strikes, demanding better pay and formal recognition as employees. Their struggle mirrors a growing global reckoning with gig work, but with fewer protections in place, African gig workers face an even steeper uphill battle.

The extractive nature of Africa's gig economy is not new – it is simply a digital mutation of a longstanding economic pattern. During the colonial era, European industries built wealth by outsourcing the most gruelling, dangerous labour to African workers – whether in gold mines, rubber plantations or railway construction. Today, platform capitalism functions much the same way, except the 'mine' is now the Internet, and the resource being extracted is data and digital labour.

Take remote gig platforms like Upwork or Remotasks, which connect African workers to data-tagging and transcription jobs. On the surface, these platforms promise global opportunity. In reality, they encourage a brutal race to the bottom, where workers must outbid one another for pennies. Artificial intelligence (AI) datasets are built on the backs of thousands of Africans performing repetitive digital piecework, their efforts uncredited, their earnings barely enough to scrape by.

When Kenyan content moderators for Facebook (now Meta) attempted to unionise – led by Daniel Motaung, a whistleblower who exposed the trauma of filtering violent content – they faced legal threats, job losses and corporate indifference. A historical echo: When mineworkers in South Africa sought fair pay decades ago, they were met with similar retaliation. The medium has changed, but the fundamental exploitation remains the same.

Compounding the problem is the glorification of the 'hustle', the idea that gig work is a stepping stone to prosperity. Governments, eager to avoid addressing systemic unemployment, actively promote gig platforms as a solution, masking the reality that these are not sustainable career paths.

Ride-hailing drivers are not 'entrepreneurs' in any meaningful sense – they are gig workers operating within a system they do not control. Yet the mythology persists, celebrated by tech firms and investors keen to frame their platforms as engines of progress. Meanwhile, local influencers and media narratives reinforce the idea that gig work is a noble pursuit, a way to 'rise above' through sheer effort.

But who truly benefits when thousands of African workers are forced into a life of algorithmic servitude, where an app determines their next meal?

Despite the bleak picture, one thing is clear – gig workers are not passive victims. Across Africa, informal collectives, WhatsApp

Daniel Foster (CC BY-NC 2.0)

**A ride-hailing driver in South Africa. Gig workers operate within a system they do not control.**

groups and grassroots movements are pushing back against digital exploitation. But the experience of gig work is not the same for all workers. Women, for instance, face unique challenges that are rarely discussed in the celebratory rhetoric around platform-based work.

The gig economy is often hailed as an equaliser, offering women a flexible alternative to traditional employment. But in reality, it replicates the same gender inequalities found in the formal economy. While men dominate ride-hailing and delivery services, women are overrepresented in lower-paying digital piecework, such as data annotation, content moderation and home-based micro-jobs. These jobs, though marketed as remote and flexible, often require relentless availability and offer no safety nets for maternity leave, healthcare or caregiving responsibilities.

And then there is the question of safety. Unlike male gig workers, women who attempt to enter physically demanding gig sectors such as ride-hailing are met with additional risks. Sexual harassment from passengers, unfair deactivation from platforms, and safety concerns at night often push women out of these jobs altogether. Even within remote gig work, online harassment remains a threat, with female freelancers reporting being offered lower pay than their male counterparts or having their work dismissed by clients.

Despite these injustices, African gig workers – both men and women – continue to resist. In Nigeria, digital freelancers have begun sharing blacklists of exploitative employers, a self-made safety net in an industry that offers no formal protections. In Kenya, Uber and Bolt drivers have staged walkouts and protests that have forced companies to temporarily revise fares. These protests have led to significant actions, including Uber reducing its commission from 25% to 18% in response to driver demands. In South Africa, foreign-born delivery drivers have formed informal unions, using collective power to demand better wages and resist police harassment. These unions not only advocate for better conditions but also serve as essential support networks, allowing workers to share vital information and fundraise for medical expenses – critical safeguards in an industry that provides none.

Africa's gig economy is at a crossroads. It can become either a digital sweatshop – extracting labour and offering little in return – or a model for ethical, worker-driven innovation. But this requires urgent action: First, governments must step in, implementing enforceable minimum wages, health protections and clear legal pathways for worker grievances. Second, platforms must be held accountable – Big Tech cannot continue profiting off African labour while offloading all risks onto workers. And third, gig workers must be recognised as workers – not 'partners', not 'micro-entrepreneurs', but employees with rights. Until these changes happen, the narrative of the gig economy as a tool of empowerment is nothing more than an illusion.

Africa's story of labour exploitation did not begin with the gig economy, and it won't end with it either. We are witnessing a digital rearticulation of the same forces that have historically shaped the continent's economic structures – where foreign investment is prioritised over fair wages, and technology serves as a cover for worker exploitation.

But in this reconfiguration, there is also space for resistance. A driver in Lagos can rally colleagues on WhatsApp. A Kenyan freelancer can warn others about exploitative contracts. A South African delivery worker can push back against illegal deportations. These small acts of defiance are part of a larger fight – one that will determine whether Africa's digital economy is built on empowerment or exploitation.

The next time you order a ride, a meal or a remote task from an African worker, ask yourself: Who really profits? Because if we continue down this road unchecked, the answer will be the same as it was centuries ago – not the workers. ◆

*Jennifer D. Daniel writes about African innovation, technology, and economic development through tech entrepreneurship. This article is reproduced from Africa Is a Country (africasacountry.com) under a Creative Commons licence (CC BY 4.0).*

COVER

# Ten years since launching negotiations on a business and human rights treaty: Selected reflections on the way forward

The activities of businesses can have adverse effects on individuals, communities and the environment. And with so many companies operating across borders, the potential harms they can inflict, and the challenges of holding them to account, have only grown. *Kinda Mohamadieh* looks at how ongoing negotiations to craft an international treaty to regulate business conduct could help safeguard human rights from corporate encroachment.

WITH the process of negotiating an international legally binding instrument on business and human rights (hereinafter referred to as LBI) having passed the 10-year mark, is this a sign of hope that the process is progressing, even if slowly, towards a meaningful outcome, or is this a sign of a challenging journey that might falter with no outcome?

There are views on both sides of the aisle. Yet, there are a few elements that ought to inform such assessment. In comparison to previous years, the most recent negotiation sessions saw delegations present in bigger numbers and more actively engaging on the substance of the negotiation text. Social movements and indigenous peoples' and civil society groups accompanying and engaging in the process remain strong and well-mobilised across the different regions. This helps in ensuring that the proposed instrument remains rooted in the lived experiences of victims of corporate misconduct and their quests for justice. In the upcoming period, the process will benefit from a number of intersessional meetings focused on discussing core issues of concern to negotiating States.


Victor Barro/Friends of the Earth International

**Social movements and indigenous peoples' and civil society groups accompanying and engaging in the LBI negotiating process remain strong and well-mobilised.**

This is unlike previous years where States and civil society only engaged with the negotiation text during the formal negotiation week that takes place once a year. The current Chair-rapporteur of the negotiations, the Ambassador of Ecuador to the United Nations in Geneva, has demonstrated strong commitment to an engaging and effective negotiation process, as was reflected in his approach to the first negotiation session he chaired in December 2024.

The process of negotiating the proposed LBI is a rich experience of intergovenrmental exchange and deliberations which will leave a valuable negotiation history. Over the past 10 years, the thinking and the practice pertaining to business and human rights have seen significant evolution. This includes emerging national and regional practices[1] as well as increasing litigation pertaining to parent-company liability and climate-change-related obligations for companies. The LBI negotiations could benefit from such developments and could incorporate lessons learnt, but ought not to be dictated by any one model.

Furthermore, the proposed LBI ought to be situated in the web of legal instruments and other mechanisms, domestic, regional and international, that tackle corporate legal accountability. While it might not provide answers to all the challenges emerging in the realm of regulating the interaction of businesses with their societal context, it has its specific added value. Its nature as an instrument of international cooperation means it could facilitate responses to harms emerging in the context of business activities that extend beyond the territorial boundaries and jurisdiction of any single State. Furthermore, it could contribute to avoiding fragmentation in the standards and ensure more convergence in the practices across various jurisdictions.

The negotiation process of the LBI could shed light on and encourage additional attention to reforms that are needed in legislative and normative frameworks that play a major role in governing the corporation, such as reforms needed in corporate law. Generally, these domestic regulatory regimes remain focused on the internal workings of the corporation and are often nascent and sometimes totally blind to governing the externalities or negative spillovers of the company's activities on its societal surrounding, including harms to individuals, communities and the environment.

The negotiations thus far have shown that each and every element of the negotiation text is important for an effective instrument. The intersessional meetings[2] will be an opportunity for negotiating States to delve deeper into core operational elements pertaining



**The environment is intrinsically connected with the human rights issues that arise in the context of business activities.**

to victims' rights and protections, access to remedy, prevention and due diligence, liability, adjudicative jurisdiction and related issues. Discussing the scope and definitions in relation to these operational elements could contribute towards the final determination of the scope of application of the proposed instrument. This article addresses selected elements in the negotiation text and highlights certain cross-cutting issues of importance for an effective instrument.

## Reflections on some elements of the draft negotiation text

The emerging convergence over the importance of ***mandatory due diligence obligations*** for businesses, reflected in the expansion of such practice in several jurisdictions, is a significant development. Yet the proliferation of national and regional models might mean fragmentation of practices across jurisdictions. The LBI could help in avoiding fragmentation by adopting a multilateral standard for such an obligation.

Attention is needed for the implementation of such an obligation in the context of corporate groups and value chains. The design of this obligation ought to take into account the dynamic relationships of influence within corporate groups and value chains and how those are exercised. Besides situations of direct or indirect control, a business enterprise could exercise sufficient influence by virtue of different forms of intervention, including but not limited to acts of supervision and management. The approach of the United Nations Guiding Principles on Business and Human Rights and recent due-diligence-related legislations[3] looks beyond direct relationships of control, supervision and management to cover business relationships and activities linked to a business's operations, products or services. It is important to consider situations where there is a level of dependence between the concerned business entities and a reasonable expectation that such relationship will last. It is also important not to exclude situations where there might only be a one-time transaction but where it is clear that the company should have known the risks attached to the activities concerned (e.g., transport of toxics). In the context of investment relations, the UN Working Group on Business and Human Rights has recommended that investors request human rights due diligence for all investees, relevant to their size, scale and sector, as well as to asset class and type of investment, on their actions to identify, prevent, mitigate and account for potential and actual adverse human rights impacts, including on environmental and climate change damage, and in conflict-affected and high-risk areas.[4]

The burdensomeness of the due diligence obligation on small and medium enterprises has been an issue of concern to various participants in the LBI negotiations. The draft text currently tackles this issue under one provision[5] that attempts to replicate the approach of the Guiding Principles.[6] It is important to effectively address this issue while considering that the term 'small and medium enterprises' differs in the way it is defined across jurisdictions. A small enterprise in terms of its number of employees and turnover in a developed economy might stand for a medium-sized or large company in a developing economy.[7]

Furthermore, it is of importance to account for ***comprehensive preventative measures***, including mitigation of risks through precautionary measures by both States and concerned businesses in order to avoid the emergence of harm, especially in cases of foreseeable risk and similarly potential irreparable harm. When harm arises, accountability should follow. Mere formalistic fulfilment of the requirement to set up and implement a due diligence plan should not become a shield from liability in cases where harm emerges.[8] Furthermore, where the risk of complicity with human rights violations is high, such as in ***conflict-affected areas*** where the risk of gross violations is high, the due diligence procedure ought to effectively provide for divestment and termination of the business relationship.

Multiple instruments pertaining to business activities give specific attention to the role of business in conflict-affected areas,[9] which reflects the importance of affording this issue specific attention in any such instrument, including the proposed LBI. Suspension and termination are well-recognised, under multiple reference documents and legislation related to business responsibilities (including the Guiding Principles), as legitimate and necessary acts by businesses in certain circumstances.[10] The Office of the UN High Commissioner for Human Rights (OHCHR) points out that '[t]he severity of potential or actual impacts (judged by their scale, scope, and irremediable character) is a key consideration in whether and when to terminate a business relationship' and that 'the severity of risks and impacts is also relevant to the speed with which decisions and action should be taken'.[11]

Accounting for ***environmental harm, including climate change***, is also key to an effective approach to due diligence obligations. The environment, including climate-related issues, is intrinsically connected with the human rights issues that arise in the context of business activities. A comprehensive and integrated approach to these issues across various elements of the proposed LBI, including due diligence, will help make the instrument more effective in addressing harms that emerge in the context of business activities. (For more discussion of these issues, see the article entitled 'Grounding the new legally binding instrument on transnational corporations on the right to a healthy environment' on pp.15–17.)

Multiple recent developments have reflected on the interactions of human rights, environmental and climate-related norms, including the UN resolutions that recognised the right to a safe, clean, healthy and sustainable environment.[12] Environmental issues, including climate change, have been considered central to recent practice pertaining to due diligence required from business. This includes the French duty of vigilance law[13] that covers risks to the environment, and the European Union Directive on corporate sustainability due diligence that establishes a human rights and environmental due diligence requirement and includes a section on climate change transition. The 2023 edition of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct[14] covers a non-exhaustive list of environmental impacts including climate change. In addition, decisions in many recent climate-change-related litigation cases have approached climate change unequivocally as a human rights crisis.[15]

The drafting of the LBI could thus be an opportunity to clarify the climate-related dimensions of the State's obligation to regulate the conduct of businesses domiciled or operating in its territory or jurisdiction, in order to prevent climate-related harm caused by businesses. The proposed LBI could also reflect the environmental and climate change dimensions under the due diligence obligation and related definitions. This would be in line with the recommendation of the UN Special Rapporteur on the human right to a healthy environment that a comprehensive due diligence approach would cover 'impacts to human rights, the environment (inclusive of the climate and biodiversity) and good governance',[16] including a requirement to undertake environmental, climate and biodiversity-based assessments. The due diligence obligation could also mandate that impact assessments be made publicly available.

One of the key cross-cutting issues in the proposed LBI is ***effective access to relevant and reliable information***, which is addressed in multiple articles of the negotiation text (such as rights of victims, access to remedy and due diligence). Communities affected by business activities often face particular challenges in gaining access to needed information on the ground, such as where subsidiaries are operating or at the lower end of the value chain. In relation to climate change, the UN Special Rapporteur on climate change documented that 'obstacles to accessing information are often coupled with the lack of clear legal requirements on the transparent reporting and verification of energy transition programmes, which is combined with lack of accuracy and consistency in reporting standards by businesses'.[17]

Timely disclosures of reliable information to people at risk of harm could be a determining factor in regard to access to justice. While business disclosures have generally focused thus far on financial performance and the materiality relevant to investors and shareholders, there is a need for robust disclosure regimes pertaining to the impacts of the business on its societal surroundings, including through its direct and indirect actions and throughout its operations. This ought to include information necessary to grasp the internal workings of a business activity, thus allowing understanding of the elements of influence in a corporate group or a value chain, which should in turn inform liability for any emerging harm. It should also necessarily include information pertaining to the fulfilment of the due diligence obligations, which would enable an assessment of the adequacy of the measures taken in light of the potential human rights impacts of the business activity concerned.

The Guiding Principles, under principle 21, highlight the importance of availability of information, recommending that business enterprises should be prepared to communicate externally regarding their human rights impacts, in 'a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences', and that the information be 'sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved'. In regard to climate change, the Special Rapporteur on climate change recommended that 'businesses should accurately report and disclose their climate impacts in an accessible manner that is sufficient to evaluate the adequacy of their efforts to prevent climate change-related human rights harms' and 'States should adopt and enforce regulatory measures on the mandatory disclosure of accurate information on the climate and human rights performance of business'.[18] It is worth nothing that an earlier version of the LBI draft negotiation text included a requirement for business enterprises to undertake and publish regular human rights, labour rights, environmental and climate change impact assessments throughout their operations.[19]

A potential key added value of the LBI is clarification of a ***legal liability*** standard applicable in cases of harm arising from business activities in which multiple entities located in multiple jurisdictions are involved. This would be a concrete way in which the proposed LBI could contribute to addressing issues arising in the context of transnational business activities. Apart from covering cases where one business enterprise legally or factually controls another entity involved in the harm, it is important to cover instances of intervention and sufficient influence by one entity over another. Such instances may include those where one entity sets the corporate group policies relevant to a harm arising, or sufficiently influences the practices in a supply chain where harm arises. Besides, it is also important that the liability standard covers instances where the business enterprise should have reasonably foreseen a risk of harm arising in an activity within its business relationships but did not take reasonable and necessary measures to prevent it.

The effectiveness of a liability standard to be agreed under the proposed LBI will depend on the extent of guidance that would be available to implementing States. For victims or plaintiffs, this would translate into clearer legal avenues to access justice and less time and costs in legal proceedings. For companies, this would imply more clarity on what is expected from them and how their practices would be assessed under the applied regime of legal accountability.

While the liability standard is key, effectively addressing access to justice also requires tackling a number of key issues that often create barriers for victims and their representatives. These include jurisdictional barriers that victims often face, the need for international cooperation in investigating cases connected to entities operating in multiple jurisdictions, aid in meeting legal costs, and cooperation in recognition and enforcement of judgments pertaining to businesses involved in transnational activities.

## Looking forward towards an outcome

The proposed LBI will potentially become one additional piece in the complex mosaic of normative and legislative reforms and innovations that are required to bridge the gap between corporate accountability and the realities of corporate practice. It would be a very important piece rooted in international cooperation to address challenges thrown up by a world of globalised markets and transnational business activities.

It is important to approach the proposed LBI as a dynamic instrument that will continue evolving over time given the continuously changing nature of business activities and entities that are its core subject-matter. The instrument should be designed in a way that builds on the latest developments yet does not preclude further developments and clarifications in the future. This is why it is important to also pay attention to the institutional framework that will be established to oversee implementation of the LBI. ◆

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## Notes

1. See for example: Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, 5 July 2024 (CSDDD); the French duty of vigilance law, Article L. 225-102-4.-I. of the French commercial code; the German Supply Chain Due Diligence Act, in German: *Lieferkettensorgfaltspflichtengesetz (LkSG)*, enacted in 2023, English translation available at: https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=3; and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, available at: https://mneguidelines.oecd.org/mneguidelines/
2. See the OEIGWG Chair-Rapporteur updated 2025 Roadmap for the implementation of HRC Decision 56/116, including the intersessional thematic consultations, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session10/igwg-10th-chair-rapporteur-updated-2025-roadmap.pdf
3. See supra note 1.
4. See Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 'Investors, environmental, social and governance approaches and human rights', A/HRC/56/55, May 2024.
5. See Article 3.2 of the draft negotiation text, which provides that '…States Parties may establish in their law, a non-discriminatory basis to differentiate how business enterprises discharge these obligations commensurate with their size, sector, operational context or the severity of impacts on human rights'. Available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session10/igwg-10th-updated-draft-lbi-with-proposals.pdf
6. See Guiding Principles on Business and Human Rights, commentary of GP14, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf. The commentary provides that 'the means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually'.
7. See South Centre Analytical Note SC/AN/TDP/2017/4 (April 2017), available at: https://www.southcentre.int/wp-content/uploads/2017/08/AN_TDP_2017_4_Micro-Small-and-Medium-sized-Enterprises-MSMEs_EN.pdf
8. The discussions in the intergovernmental working group negotiating the proposed LBI have generally focused on a comprehensive liability regime that extends beyond liability for failure to fulfil the due diligence obligations being negotiated. One crucial element that had been negotiated under the draft LBI was that fulfilment of human rights due diligence shall not automatically absolve an entity from liability for causing or contributing to harm. A previous version of the draft negotiation text included a proposed article to that effect. See updated draft legally binding instrument (version with tracked changes), Article 8.7, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-track-changes.pdf
9. See Guiding Principles, principle 7 on risks that emerge in conflict-affected areas and commentary of principle 23. See also the International Law Commission draft principles on protection of the environment in relation to armed conflicts, and UNGA A/RES/77/104 adopted in December 2022; General Comment No. 16 by the Committee on the Rights of the Child on State obligations regarding the impact of the business sector on children's rights (2013); and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023), para. 45. See also Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 – the Conflict Minerals Regulation; and Swiss Conflict Minerals and Child Labour Due Diligence and Transparency Ordinance. See also Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 'Business, human rights and conflict-affected regions: towards heightened action', A/75/212, July 2020.
10. See Guiding Principle 19 and related commentary. See also the EU Corporate Sustainability Due Diligence Directive, under which suspension or termination of business relations is recommended 'as a measure of "last resort" when all other actions have failed, and where severe impacts are at stake and only where these impacts outweigh the foreseeable negative consequences of disengagement…'. Available at: https://commission.europa.eu/

document/download/7a3e9980-5fda-4760-8f25 bc5571806033_en?filename=240719_CSDD_FAQ_final.pdf. The OECD Guidelines recognise the importance of 'appropriate responses with regard to the business relationships … includ[ing] … temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact'. OECD Guidelines for Multinational Enterprises, Commentary on General Principles, paragraph 22. See https://mneguidelines.oecd.org/global-forum/2017-GFRBC-Session-Note-Responsible-Disengagement.pdf

11. GP 14 and related commentary. See also OHCHR (August 2023), 'Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting', https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf. The OHCHR points out that 'the more severe the harms involved, the more justifiable it would be for a business to consider terminating the business relationships involved. Indeed, if there are risks of "being involved in gross abuses of human rights such as international crimes, [a business] should carefully consider whether and how it can continue to operate with integrity in such circumstances"'. OHCHR Corporate Responsibility to Respect Interpretive Guide, p. 80, available at: https://www.ohchr.org/en/publications/special-issue-publications/corporate-responsibility-respect-human-rights-interpretive, referenced in ibid., OHCHR (August 2023).
12. Resolution adopted by the General Assembly, 'The human right to a clean, healthy and sustainable environment', A/RES/76/300, 28 July 2022; and resolution adopted by the Human Rights Council, 'The human right to a clean, healthy and sustainable environment', A/HRC/RES/48/13, 8 October 2021. The Human Rights Council also decided to establish a new mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change. See Human Rights Council, 'Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change', A/HRC/RES/48/14, 8 October 2021.
13. Article L. 225-102-4.-I. of the French commercial code.
14. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, available at: https://mneguidelines.oecd.org/mneguidelines/
15. See European Court of Human Rights in the *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* climate case (Application no. 53600/20), judgment available at: https://hudoc.echr.coe.int/#%7B%22itemid%22:%5B%22001-233206%22%5D%7D. The court found Switzerland in violation of the European Convention on Human Rights (ECHR) for failing to implement sufficient measures to combat climate change. The approach of the Court reinforces the centrality of acting on climate-change-related obligations as part and parcel of acting to fulfil human rights. In relation to this case, see CIEL press release, 'Historic climate ruling: States must step up climate action to protect human rights', available at: https://www.ciel.org/news/historic-climate-ruling-on-climate-justice/. In the *Urgenda* case, the Supreme Court of the Netherlands concluded that the Netherlands has an obligation under Articles 2 and 8 of the ECHR to 'do its part' to prevent dangerous climate change, even if it is a global problem. The Supreme Court ruled that the obligation to take appropriate measures under Articles 2 and 8 includes the obligation of States to take preventive measures against an impending danger, even if it is not certain that the danger will materialise. This may include both mitigation measures (measures to prevent the materialisation of the danger) and adaptation measures (measures to absorb or soften the consequences of that materialisation). Supreme Court (20 December 2019), ECLI:NL:HR:2019:2006, *Nederlands Juristenblad* 2020/41. In 2022, the Brazilian Federal Supreme Court ruled climate change is a constitutional matter and that treaties on climate change are a species of treaty on human rights. Source: Federal Supreme Court of Brazil, 7 April 2022 (*PSB et al. v. Brazil*). Other cases addressing climate change and human rights include the 2015 *Leghari* judgment of the Lahore High Court in Pakistan that considered climate change poses a serious threat to access to water and food, among other things, and constitutes a violation of the right to life. Lahore Hight Court, 4 September 2015, case no. W.P. No. 25501/2015, para. 7 (*Leghari/Federation of Pakistan*). A decision by Colombia's Supreme Court in relation to Amazon deforestation ruled that this deforestation and the resulting emissions are a serious attack on fundamental rights, including the right to life. Supreme Court of Colombia, 5 April 2018, no. STC4360-2018, p. 13 (*Future Generations/Ministry of the Environment*).
16. David Boyd and Stephanie Keene, 'Essential elements of effective and equitable human rights and environmental due diligence legislation', available at: https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2022-07-01/20220701-sr-environment-policybriefing3.pdf
17. Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, 'Access to information on climate change and human rights', A/79/176.
18. Ibid., report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, p. 19. The Special Rapporteur proposes that 'Companies should share the climate footprint of their products and services; technical and physical characteristics and impacts of high-emission projects, and available technologies; as well as broader sustainability efforts, compliance with environmental regulations and investments in renewable energy and eco-friendly technologies. Companies engaged in projects to address climate change should share information prior to starting these projects' (citing A/76/154 and A/HRC/55/43).
19. See the 2019 draft LBI text, 3rd revised version, proposal by Panama and Philippines, under Article 6.4a, available at: https://documents.un.org/doc/undoc/gen/g23/008/93/pdf/g2300893.pdf

# The elephant in the room: Ending corporate capture of the LBI negotiations

Unless the LBI negotiating process is freed of influence by business interests, it risks perpetuating the very corporate impunity it seeks to address.

**Marta Ribera Carbó, Martha Sedeida Devia Grisales, Shohel Chandra Hajang and Mona Sabella**


THE ongoing negotiations to establish an international legally binding instrument (LBI) or treaty to regulate corporate power have reached a critical juncture 10 years since their inception. As the process unfolds, the encroachment of corporate influence on both State decision-making and the text of the draft treaty threatens to undermine its core principles. Corporate capture of governance at both the international and national levels leads to the prioritisation of profit over environmental and people's rights, causing systemic injustices that perpetuate poverty, inequality, environmental degradation, and violence in various forms – including, at its most severe, genocide.[1]

Three major business representatives were present in the negotiating space during the 10th session of the negotiations, which took place in December 2024: the United States Council for International Business (USCIB), the International Organisation of Employers (IOE) and the International Chamber of Commerce (ICC). Several statements by these representatives very blatantly called for the weakening of the LBI text – particularly in relation to calls by social movements and other civil society organisations to strengthen corporate legal liability and facilitate the enactment of extraterritorial obligations and access for victims of corporate violations and abuses to justice across a number of jurisdictions.

For instance, corporate actors in the room threatened withdrawal of investment from State parties if strong provisions are not removed from the text. Specifically, USCIB stated that the current draft LBI encourages a cut-and-run approach that would result in market exits and cause economic, trade and job losses for developing countries. In the same statement, USCIB argued against establishing liabilities for natural persons so as to shield corporate managers from accountability.[2] This is entirely unsurprising. Corporate actors can be expected to prioritise their survival and profit margins over the ultimate guarantee of corporate accountability and the protection of human rights. For this reason, members of ESCR-Net – the International Network for Economic, Social and Cultural Rights – have consistently called for the treaty negotiations to become completely free from corporate influence.[3]

Corporate actors must not be permitted to play a role in shaping decisions about their own accountability, as it is unacceptable for the perpetrator or potential perpetrator of a rights violation or environmental harm to have a say in determining the rules governing their own liability. The very notion of allowing corporations to influence the terms of their own liability is fundamentally flawed. This constitutes a clear conflict of interest as corporations are driven by profit motives that inherently clash with the protection of human rights and environmental standards. It violates basic principles of fairness and due process, undermining the possibility of establishing effective and fair mechanisms of redress. Additionally, in any serious normative framework, the party that has caused harm cannot participate in defining the limits of its own liability, as this would be tantamount to legitimising impunity under the guise of consensus.

Despite this, the aforementioned corporate lobbyists represent some of the worst corporate actors of our time. It is unreasonable to expect such corporate representatives to truly and voluntarily hold themselves or their clients accountable for the harm they may inflict via a non-adjudicative body, nor should they be allowed to determine the scope of their own responsibilities. Such a setup would be a direct contradiction to justice and accountability.


A protest by civil society groups during the 9th session of the LBI negotiations in Geneva in 2023. Social movements have called for the negotiations to become competely free from corporate influence.

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Take the case of Indigenous Peoples, who continue to face multiple challenges and threats including a lack of self-determination, biodiversity losses, climate injustice, deforestation, land degradation, commercialisation, land-use change, land grabbing, criminalisation, militarisation and other human rights violations. Under the guise of 'conservation' or 'energy transition' projects, corporate entities operate on Indigenous territories with impunity and violate Indigenous Peoples' rights without obtaining their free, prior and informed consent (FPIC). Massive displacement of Indigenous Peoples, loss of livelihood, and the erosion of their culture and identity are just some of the harmful effects that occur as a result of these projects.

In many instances, Indigenous Peoples are not even privy to basic information about projects in their territories. While Indigenous leaders have called, through the treaty process, for victims of corporate abuses or violations to have the right to access information, corporate representatives work openly to undermine it. A statement from IOE at the 10th negotiating session last year clearly intended to limit access to information.[4] This is why we need international regulation to hold corporate actors accountable and that is free from the influence of corporations.

While the LBI process remains influenced to an extent by corporate actors, we still have an opportunity to change it and we must change it. Learning from the World Health Organization (WHO)'s Framework Convention on Tobacco Control (FCTC), we need to guard against corporate capture in policymaking and this can be regulated. Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to 'act to protect these policies from commercial and other vested interests of the tobacco industry'. This means that the FCTC process explicitly recognised the conflict of interest between the tobacco industry and public health, and it took steps to protect policymaking processes from industry interference. The FCTC serves as a model for how we can safeguard the treaty negotiations and any national decision-making processes on public services from corporate influence, ensuring that the public interest prevails over corporate agendas. We must insist that this be further expanded and more explicitly incorporated throughout the text of the treaty so it may fulfil its intended mission.

Corporate capture of international governance is happening at alarming rates and corporate interests are increasingly dictating the terms of global policymaking. This has been particularly evident in the context of the United Nations (UN) and other multilateral forums, where corporations have gained privileged access to decision-making spaces. The corporate capture of national governance – especially in the Global North – has further exacerbated this issue,[5] as these governments have tended to prioritise corporate interests over public welfare, often obstructing efforts to establish a robust legal framework for corporate accountability.

In the face of this growing corporate power, we must ask: are States willing to allow public decision-making to be swayed by corporate interests rather than the will of the people they are meant to represent? Are we willing to accept a world where the economic elite – representing just 1% of the global population – shapes decisions that affect the lives and rights of the other 99%? The answer must be a resounding no. It is essential that States, particularly those in the Global South, continue to lead efforts to free the treaty process from corporate interference, and push for an LBI that curtails corporate power and holds corporations accountable for the harm they cause. We cannot afford to allow corporate influence to dictate the terms of this treaty, as doing so would risk perpetuating the very corporate impunity that this process seeks to address.

The assault by corporate power on the international human rights and environmental agenda is today more evident than ever,[6] taking the form of attacks on global governance and multilateral institutions. The need for action is urgent. To this end, ESCR-Net has put forward several key red lines that must not be crossed as we elaborate a final draft of the treaty text.[7]


**The International Chamber of Commerce (ICC) headquarters in Paris. Business representatives, including from the ICC, have been taking part in the LBI negotiations.**

Corporate capture of international governance is directly undermining our efforts to set internationally binding laws to protect human rights, the environment and the common good. The time has come for States to demonstrate leadership in halting this obstruction, and for the international community to commit to a world where human rights are placed above profit and where corporations are held accountable for the harms they inflict. Change must also happen across the UN system – starting from the Office of the Secretary-General, who has introduced concerning initiatives over the years calling for 'multistakeholderism' and dialogue between 'stakeholders' but ultimately inviting corporate actors and economic elites to be part of UN decision-making spaces.[8]

The LBI represents an opportunity to help direct us towards a more just and equitable world, one in which the rights of individuals and communities are protected from corporate power. But to realise this vision, we must ensure that corporate influence is eliminated from the negotiating process and the outcome. The LBI must be firmly rooted in the principles of justice, human rights and environmental sustainability, with an unwavering commitment to protecting the public interest. The future of global governance depends on it. ◆

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## Notes


1. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session10/1-general-statements/ngo-ecosoc-status/igwg-10th-general-statement-ccr-joint.pdf
2. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session10/article8/ngos/igwg-10th-art-8-uscib.pdf
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COVER

# Grounding the new legally binding instrument on transnational corporations on the right to a healthy environment

The main existing frameworks to regulate corporate conduct – at the international, regional and national levels – currently fail to meaningfully incorporate protection of the environment. *Francesca Mingrone* and *Ana Maria Suarez-Franco* explain how including the right to a healthy environment and broader environmental considerations in the new legally binding instrument on transnational corporations is essential to ensure effective protection of people's rights and the planet.

## The human rights–environment nexus

INDIGENOUS Peoples, communities affected by corporate crimes, social movements, human rights experts and the scientific community have been saying it loud and clear: the environment and human rights are deeply intertwined. Environmental-driven human rights harm can manifest in a multitude of ways: the suffering of fisherwomen in coastal communities who are losing their livelihoods and seeing their children migrate due to climate change; the intoxication, sickness and death of rural workers poisoned by highly hazardous pesticides; or the destruction of biodiversity by agroindustrial food systems, which undermines food sovereignty and causes zoonotic diseases. The triple planetary crisis (climate change, pollution and biodiversity loss) undermines the fundamental rights of individuals and communities, especially those most marginalised.

There is also clear evidence of the role that corporate actors – especially transnational corporations and financial institutions – play in fuelling environmental degradation. A striking example is the landmark inquiry by the Philippines' Commission on Human Rights,[1] which exposed how big oil, gas, coal and cement producers – the so-called Carbon Majors – have significantly contributed to climate change and the resulting human rights violations. While there cannot be effective environmental protection without taking into account human rights – whether substantive or procedural ones – to fully protect human rights, international instruments, processes or mechanisms must address relevant environmental dimensions. This also applies to the ongoing negotiations on a legally binding instrument (LBI) to regulate transnational corporations and other business enterprises.

The human rights–environment nexus is a multifaceted one. On one hand, States' lack of effective action to address the triple planetary crisis violates a wide range of internationally recognised human rights, such as the right to life, health, food, water and housing. On the other hand, some measures aiming to tackle environmental disruption can also have the potential to undermine human rights when they impact the livelihood of individuals and communities, especially their access to land, water and energy. In both circumstances, procedural rights play an essential role, as environmental policymaking must be grounded in the right to public meaningful participation, access to information and access to justice, as well as Indigenous Peoples' right to self-determination, including free, prior and informed consent.

## The relevance of the right to a clean, healthy and sustainable environment

The right to a clean, healthy and sustainable environment captures this complex interrelation between human rights and the environment in one single right, enhancing human rights protection in the context of environmental degradation and destruction. As a former United Nations Special Rapporteur on human rights and the environment explained, the right to a healthy environment consists of substantive elements – clean air; safe, sufficient water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, learn and play; healthy biodiversity and ecosystems; and a safe, livable climate[2] – as well as procedural ones.[3] As the right to a healthy environment is a 'compound right',[4] deeply interlinked with other fundamental human rights, its universal recognition and application as a human right makes it easier to establish a connection between a given act or omission and the subsequent human rights violations.

At the global level, the right to a clean, healthy and sustainable environment was recognised by the UN Human Rights Council in 2021,[5] and subsequently by the UN General Assembly in 2022.[6] Other human rights mechanisms, as well as environmental decision-making processes, have since been building on this. The Committee on the Rights of the Child stated that this right is implicit in the Convention on the Rights of the Child in its *General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change*,[7] and the Committee on Economic, Social and Cultural Rights is taking a similar stance with regard to its Covenant, in its *Draft General Comment on economic, social and cultural rights and the environmental dimension of sustainable development*.[8] Several negotiated outcomes in the context of multilateral environmental agreements have reaffirmed this right.[9]

Meanwhile, at the regional level, this right has enjoyed longstanding recognition, and is well established in the San Salvador Protocol,[10] the Inter-American Convention on Human Rights, the African Charter on Human and Peoples' Rights,[11] the Arab Charter on Human Rights[12] and the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration.[13] Within the Council of Europe, discussions are ongoing with regard to the possibility of recognising the right through a legally binding instrument.[14] In the ASEAN context, this right is also being included in the *draft Declaration on environmental rights*.[15] Additionally, this right is recognised in the national constitutions and legal frameworks of over 160 States.[16] Courts at the national and regional levels are increasingly referring to this right and refining its scope, as the recent *La Oroya v. Peru* case[17] before the Inter-American Court of Human Rights or the *Ranjitsinh et al. v. Union of India et al*. case[18] before the Indian Supreme Court demonstrate.

During the hearings for the International Court of Justice's ongoing advisory opinion process on States' obligations in respect to climate change, in December 2024, at least five States[19] mentioned the right to a healthy environment in connection with the issue of corporate accountability. The Framework Principles on Human Rights and the Environment, which outline States' obligations with regard to the right to a healthy environment, establish that States must regulate private actors that have the potential to harm the environment and human rights.[20]

## The right to a healthy environment in the draft legally binding treaty

While there is no mention of the environment in the Human Rights Council's resolution that established the open-ended intergovernmental working group (OEIGWG) tasked to negotiate the LBI back in 2014,[21] environmental rights, the right to a clean, healthy and sustainable environment, and broader environmental considerations have been part of the discussions throughout the years, and have found their way into the various versions of the draft texts. During the latest negotiation session, in December 2024, the environment was consistently raised by delegations and non-governmental organisations.[22] The newly established group of experts to advise the Chair of the OEIGWG and States was also requested to provide their view on the nature of the right to a healthy environment. The experts confirmed that there is growing evidence that this right is part of international law, and stated that 'taking into account the indicia of crystallisation of interrelated obligations, States may wish to consider them as part of the material scope of the LBI consistently with the development in multilateral and judicial fora'.[23]

While it should be argued that the right to a clean, healthy and sustainable environment is already part of the international human rights corpus – and thus, it is implied every time the draft LBI refers to human rights – explicitly mentioning the right to a healthy environment in the text will be essential. It would reinforce this right's status as internationally recognised, and better inform States' and jurisdictional bodies' application of the LBI. Such explicit reference will also strengthen the case that States have an obligation to regulate transnational corporations in a manner that effectively upholds this right, and will facilitate access to justice and remedy for those who have suffered harm due to corporate-induced environmental degradation or destruction.

The main existing frameworks to regulate corporate conduct – at the international, regional and national levels – currently fail to meaningfully incorporate the right to a healthy environment and broader environmental considerations, a needed step in any upcoming regulation. For instance, the European Union's Directive on corporate sustainability due diligence refers to the right only in its Preamble. Thus, the legally binding treaty on States' obligations to regulate transnational corporate conduct has the opportunity and responsibility to fill this normative gap, by explicitly including the right to a clean, healthy and sustainable environment and by integrating this right in its substantive provisions. There should be careful consideration of how to achieve this in a way that gathers consensus across negotiating blocks and still ensures that the right to a clean, healthy and sustainable environment effectively informs the legally binding instrument.

The way ahead is still long and fraught with uncertainties. As Ecuador, in its capacity of OEIGWG Chair, has announced a series of thematic intersessional consultations throughout 2025, 'including to address existing divergent views',[24] we, as human rights and environmental organisations close to the social movements and affected communities, urge the negotiating States to ensure a spirit of constructiveness to advance the decade-long process. The final outcome should be grounded in the understanding that separating human rights and the environment defeats the purpose of an effective instrument to regulate corporate conduct and to ensure that any transition from a fossil fuels–based economy is a just and sustainable one. The explicit inclusion of the right to a clean, healthy and sustainable environment is a natural acknowledgment of the evolution of the human rights framework and of the lived realities of those at the frontlines of corporate-induced environmental disruption. ◆

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3. Ibid. See also UN Special Rapporteur on the right to a healthy environment, *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment: Overview of the implementation of the human right to a clean, healthy and sustainable environment* (2024), available at https://docs.un.org/A/79/270, at 39–49.
4. Ibid., at 38.
5. Resolution HRC/RES/48/13, *The human right to a clean, healthy and sustainable environment* (2021).
6. Resolution A/RES/76/300, *The human right to a clean, healthy and sustainable environment* (2022).
7. Committee on the Rights of the Child, *General Comment 26 (2023) on children's rights and the environment with a special focus on climate change*, CRC/C/GC/26, para. 63.
8. UN Committee on Economic, Social and Cultural Rights, *Draft General Comment on economic, social and cultural rights and the environmental dimension of sustainable development*, para. 10.
9. See, for instance, the outcome of the First Global Stocktake under the Paris Agreement, UN Doc. FCCC/PA/CMA/2023/L.17, and the Sharm El-Sheikh Implementation Plan, Decision 1/CMA.4; Kunming-Montreal Global Biodiversity Framework, para. 14, Decision 15/4; and fifth International Conference on Chemicals Management (ICCM5), Bonn Declaration for a Planet Free of Harm from Chemicals and Waste, Resolution V/1, para. 17.
10. Art. 11.
11. Art. 24.
12. Art. 38.
13. Art. 28f.
14. Steering Committee for Human Rights (CDDH), *Draft Revised CDDH report on the need for and feasibility of a further instrument or instruments on human rights and the environment* (2023), available at https://rm.coe.int/steering-committee-for-human-rights-cddh-drafting-group-on-human-right/1680afa8ee
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# Curbing corporate abuse and exploitation in Latin America

Having often fallen victim to business wrongdoings, Latin America badly needs effective regulation of corporate activity to protect human rights and the environment. Efforts towards this end have thus far fallen short, but some building blocks for a robust corporate accountability regime are already in place in the region.

**Gabriela Quijano**

Felipe Werneck/Ibama (CC BY-SA 2.0)

**In January 2019, a mining dam owned by Brazilian company Vale collapsed in the municipality of Brumadinho, sending 12 million cubic metres of mining waste down the Ferro-Carvão River.**

IN January 2022, about 11,900 barrels of crude oil belonging to the company La Pamilla S.A.A. Refinery, a subsidiary of Spain's Repsol group, spilled onto the beaches of Ventanilla district in Peru. The spill affected a maritime and land area of 18,000 square metres, and resulted in the death of more than 1,850 wild animals. Thousands of local families lost their livelihoods.[1]

In January 2019, a mining dam owned by Brazilian company Vale collapsed in the municipality of Brumadinho, sending 12 million cubic metres of mining waste down the Ferro-Carvão River. The waste buried the river, irreversibly damaged the vegetation and aquatic life, and killed 272 people.[2]

Two large-scale infrastructure projects, the Istmo de Tehuantepec Interoceanic Corridor and Tren Maya, are being fiercely pushed by the government and companies in the south of Mexico without consulting local communities despite the serious risks to the environment and human rights they entail.[3] In February 2025, three members of a local indigenous organisation that opposes these projects were shot dead.[4]

Members of the small indigenous community of the Charque in the Bolivian Amazon have been found to have mercury in their bodies. They live by a river which is highly contaminated with the waste material from unregulated mining activities in the area.[5]

There is no shortage of examples of corporate harm to people and the environment in Latin America. The region's populations are routinely affected by the irresponsible and often illegal activities of companies operating across various industry sectors. Environmental and human rights defenders, community leaders, and members of grassroots organisations who dare raise their voices to resist these practices become targets of violent attack, and many are killed.[6] The need for effective regulation of corporate activity in the region is obvious and pressing. While regulation alone will not provide all the answers, it is a necessary and essential element of any genuine effort to curb corporate harm.

## The global context

The need to control corporate activity to ensure respect for human rights and the environment has long been recognised at the global level. However, the way to achieve this has been contested, particularly between those favouring voluntary approaches and soft-law mechanisms and those advocating for regulation and binding measures. In 2011, the United Nations Human Rights Council adopted the UN Guiding Principles on Business and Human Rights (Guiding Principles), a soft-law instrument that has been recognised and endorsed by most Latin American States. That same year, the Organisation for Economic

Co-operation and Development (OECD) updated its Guidelines for Multinational Enterprises (OECD Guidelines), incorporating the second pillar of the Guiding Principles. This pillar addresses the corporate responsibility to respect human rights and to carry out human rights due diligence.

The Guiding Principles and OECD Guidelines are not binding and rely on voluntary uptake. As such, they proved ineffective in curbing corporate abuse. Calls for binding measures continued and increased over the years. In June 2014, under the leadership of Ecuador and South Africa, the Human Rights Council passed the historic Resolution 26/9 establishing an Open-Ended Intergovernmental Working Group to elaborate an international legally binding instrument (LBI) on transnational corporations and other business enterprises with respect to human rights. From the beginning, this process has been highly contentious and divisive, with a marked split between Global North States resisting the process and Global South States supporting it. Despite the challenges, the process is ongoing, and participating States are now actively negotiating textual amendments to an advanced draft LBI.[7]

A few years after the adoption of Resolution 26/9, European countries began to propose and enact their own corporate due diligence laws. In 2017, France passed the Duty of Vigilance law, the first of its kind in the world. The Netherlands, Norway, Switzerland and Germany followed suit. Legislative proposals are also being discussed in Austria, Belgium, Denmark and other European States.[8] Several countries outside Europe have also introduced or are in the process of introducing mandatory human rights and environmental due diligence laws. The European Union as a block has passed many due diligence laws, including the Conflict Minerals Regulation, Regulation on Deforestation-Free Products, Batteries Regulation, Forced Labour Regulation, and the recently approved Corporate Sustainability Due Diligence Directive or CSDDD. Although different in focus, scope and methodology, all these laws impose obligations on European companies, or companies operating in the European market, to take due diligence steps along their supply chains to ensure some degree of protection of the environment and human rights.

Europe is evidently breaking new ground in this area and setting the course for the rest of the world. However, these laws are not perfect, and they are the result of contested legislative processes and high levels of compromise. Shortfalls include the limited number of companies or industry sectors covered, a narrow human rights focus, limitations on the scope of obligations, and lack of effective enforcement measures or legal consequences for breaches. The fate and integrity of the CSDDD is now also in question after the announcement by the president of the European Commission in November 2024 that its provisions, jointly with those of two other corporate due diligence instruments, would be ‘simplified’ through an omnibus law.[9]

## What role for Latin America?

European due diligence laws, and similar laws in other parts of the globe, will have an impact on Latin American countries. Domestic companies which are part of multinational groups or global supply chains will have to take due diligence steps to respond to the demands of European and other companies subject to these laws. This form of regulation reinforces historically asymmetrical power relations and colonial paradigms.[10] Its implementation, interpretation and enforcement is fully in the hands of foreign authorities, regulators, companies, lawyers and other actors over which Latin American societies have little control.

This is not to say that these laws are not needed. They are, and they need to be stronger. However, Latin American countries (like all other Global South countries) must produce their own corporate accountability frameworks through transparent and participatory processes that put local actors, particularly affected and potentially affected rightsholders, in the driver’s seat. The resulting laws, regulations and enforcement mechanisms should more adequately address existing regulatory gaps, and respond to local realities and needs. This can also help generate an autochthonous community of knowledge and practice, whereby the notion and expectation of corporate respect for human rights and the environment become engrained in public institutions, the legal architecture, as well as cultural norms and values.[11]

To implement the Guiding Principles, some Latin American countries including Argentina, Chile, Peru and Colombia have adopted National Action Plans on Business and Human Rights (NAPs).[12] However, these plans have generally been inadequate because of both the way in which they have been elaborated and the resulting contents. Most have been drafted without sufficient consultation and participation of civil society. As far as their contents are concerned, they do not contemplate legislative or binding measures except for some peripheral provisions, they all omit attention to critical industry sectors,[13] and they even fall short of the Guiding Principles.[14] The development of Peru’s NAP is considered the most transparent and participatory in the region, yet its implementation record three years from its approval has been appalling.[15]

As a result of these multiple shortcomings, NAPs have not led to any significant improvement in the protection of human rights and the environment in the context of business activity in the region. For human rights and environmental defenders, the situation has in fact got increasingly worse.[16] If this was not obvious before, it is obvious now that Latin America must swiftly move towards regulation and effective enforcement of laws it already has.[17]

## What's needed?

Effective regulation of corporate activity to prevent human rights abuses and environmental damage requires a comprehensive legal reform programme which includes enacting new legislation, amending existing ones and ensuring effective enforcement. It rests not on a single law but on a number of coordinated and coherent normative interventions and the institutional arrangements necessary for their effective enforcement. In a way, NAPs could have been the vehicle for such reforms, but as just stated, these have been utterly disappointing. The legal reform programme also requires harmonisation across all areas of public policy and law, and dismantling existing barriers to effective regulation, such as those erected by bilateral investment treaties.

Whether through new laws, the update and amendment of existing ones, and/or the effective enforcement of protections already in place, this programme should contemplate the following key elements:

- The establishment of an explicit corporate duty to respect human rights and the environment, and to prevent human rights abuses and environmental damage, which should extend along entire value chains. How this is discharged in practice can be adapted to cater for smaller companies with less resources and impacts.
- State monitoring and enforcement of the above duties, through competent and independent regulatory bodies. This should include monitoring and enforcement in all the areas in which the State formally facilitates or enables economic activity such as through public procurement, licensing and permits, privatisation of public services, export credit and other forms of financial support, etc.
- Adequate administrative and judicial procedures capable of responding to situations of imminent harm, ordering corrective or remedial action, and investigating and sanctioning allegations of wrongdoing by both State and corporate actors.
- Affirmative measures to ensure material equality between companies and rightsholders.
- Robust systems of civil, administrative and/or criminal liability of companies that cause or contribute to human rights abuses and/or environmental damage or fail to comply with their duties.
- Effective access to justice for victims of corporate abuse, which requires eliminating or reducing existing barriers to justice and putting in place mechanisms that facilitate this access such as class actions, reversal of the burden of proof, broad legal standing, etc.[18]
- Guarantee and protection of procedural rights of participation, consultation, free, prior and informed consent (FPIC), transparency and access to information, the protection of environmental and human rights defenders, and integration of an intersectional approach in the enactment and implementation of all laws, regulations and measures to discharge both State and corporate duties.[19]

A comprehensive legal reform programme of the magnitude suggested here needs commitment by many actors over a prolonged period of time. This is not easy and the political context may not be favourable. More discrete and incremental reforms are also worth pursuing and can make a big difference for many people, even within the confines of a specific sector, corporate activity or legal regime. Just changing the rules on civil liability, for example, could make an extraordinary difference if these facilitated parent or lead companies being held liable for abuses in their supply chains. So could enhanced environmental impact assessments, or allocating more resources, power and independence to regulatory bodies.

## How do we get there?

It is down to each State to assess its national legal and institutional frameworks to understand the type of intervention that is needed. In Latin America, many strong laws already exist but they are not applied effectively. An obvious step is therefore to ensure effective implementation. Efforts to this end require an honest and careful examination of the reasons why existing laws and regimes are not being implemented. Corruption, corporate capture of the State, weak regulatory authorities, conflicting laws and ideas of development, a context of generalised impunity, the informal economy, the asymmetry of power between companies and those affected by their activities, violence against social activists, and historical patterns of marginalisation, discrimination and exclusion all play a role. It would be naïve to think that new policies or laws can do away with all these factors, but there are concrete measures that can be taken to eliminate some of them or reduce their impact.[20]

Other laws will need updating and reforming. Most Latin American economies pursue extractive models of development, which today are being intensified by the energy transition. A large amount of environmental destruction and human rights abuse occurs in the context of mining. Are mining codes and other related laws up to scratch to protect human rights and the environment? What are their gaps, and in what way do they make matters worse? How can they be improved to bring them in line with the State's duty to respect and protect in the context of business activities? These questions are relevant for all policies and legal regimes dealing with or governing specific areas of corporate activity such as forestry, hydrocarbons, water codes, labour and environmental protection laws, land planning regimes, etc.

New laws are also needed. For example, regulatory regimes governing corporate conduct do not tend to apply along entire value chains. At best, they apply to contractors and sub-contractors in certain circumstances. This means that even where regulatory regimes require companies to respect certain human rights, such as the labour rights of their workers, they do not place these same requirements in relation to workers in the value chain. Another important legal gap is due diligence. No Latin American country has mandatory environmental and human rights due diligence laws of the sort now emerging in Europe.

## Opportunities

Latin American countries have a strong normative framework to draw from to put in place robust and effective corporate accountability regimes. The region has two powerful regional human rights bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). In 2019, the IACHR published a landmark report on business and human rights which outlines many of the proposals, measures and principles described in this article.[21] The IACtHR has dealt with many corporate human rights abuse cases, and 'regionalised' the international business and human rights framework. Landmark cases include *Kalina Lokono v. Surinam*,[22] *Empleados de la Fábrica de Fuegos de Santo Antônio de Jesus v. Brazil*,[23] *Buzos Miskitos v. Honduras*,[24] *Vera Rojas v. Chile*,[25] *Olivera Fuentes v. Peru*,[26] and *La Oroya v. Peru*.[27] Among the most significant findings are the express recognition of the corporate duty to respect human rights, which, in the *Olivera Fuentes v. Peru* case, the IACtHR extends to the entire value chain. The IACtHR's jurisprudence is evolving and providing ever more sophisticated and granular input for national legislative efforts on business and human rights.

The region can also draw from firmly established principles of the Interamerican Human Rights System that are often unique to the region and highly relevant in the context of business and human rights. Key among these are the *pro persona* principle, the principle of comprehensive reparation and centrality of the victim, and the principles of material equality, precaution and prevention. Over the years, the IACtHR has provided guidance on the content and meaning of these principles which, if adequately integrated and reflected in legal regimes, can make a significant difference in the lives of rightsholders affected or potentially affected by corporate activities.

Another significant feature of the region is the express recognition of the right to a healthy environment in the 1988 Protocol of San Salvador and many national constitutions. The IACtHR's Advisory Opinion on the Environment and Human Rights has fleshed out this right, and includes other significant standards that are yet to be developed at the global level.[28] For example, it makes clear that the environment must be protected in its own right (i.e., regardless of any obvious risk to or impact on human rights). Some national constitutions such as those of Ecuador and Bolivia go further, explicitly recognising the rights of nature.

Sixteen countries in the region have now ratified, and are bound to implement, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (known as the Escazú Agreement).[29] The Escazú Agreement sets out a number of 'access rights' which are extremely important in the context of business activity. These are the right of individuals and communities to participate in decision-making processes concerning the environment and public health, to access environmental information, and to access justice in environmental matters. The agreement is also the only binding instrument in the world that establishes an obligation of protection of human rights defenders and organisations working on environmental issues.

National courts have also started to use the Guiding Principles to assess and decide cases, 'nationalising' and 'localising' the international standards, and providing further input to States in the development of corporate accountability regimes. In the AWÁ indigenous community case, for example, the Colombian Constitutional Court found the corporate defendant liable for breaching the indigenous community's right to free, prior and informed consent, even though it had a licence to operate. It based its findings on the fact that the company had breached its own due diligence duties as far as the rights of the AWÁ community were concerned.[30]

Many national constitutions and legal frameworks have progressive approaches and innovative tools to protect human rights which can facilitate or enhance protection in the context of business activity. Almost every country in Latin America has incorporated international human rights law into domestic law, primarily through their constitutions. The horizontal application of human rights obligations to corporate actors is broadly recognised in the region, giving many States a headstart.[31] The tool of *amparo* or *tutela* is widespread in the region. This is an urgent legal action to protect constitutional and human rights against acts or omissions not only of the State but of private actors too.

Many of the mechanisms advocated to improve corporate accountability and access to remedy globally are already in place in some national legal systems. The constitution of Ecuador, for example, establishes the reversal of the burden of proof in cases of environmental damage. Colombia's transitional justice legislation includes many tools designed to redress power asymmetries and past injustices, such as legal presumptions in favour of victims of the armed conflict. Many civil codes also establish the 'dynamic burden of proof', which allows judges to shift the burden of proof to whomever has the greatest ability to produce the relevant evidence. Corporate criminal liability for environmental crimes is recognised in some countries, such as Brazil. In Uruguay, companies can be held criminally liable for endangering the life, health or physical integrity of workers, without a need for actual harm. Instances of strict or absolute liability are also commonplace. Ecuador imposes due diligence and traceability measures along the entire value chain of aquaculture and fishing companies.[32] Brazil has a strong class action system which is free for claimants, contemplates the reversal of the burden of proof, and exempts claimants from paying the defendants' costs if they lose.[33] These are all critical measures to ease the financial burden on rightsholders who wish to pursue legal action.

Finally, there is a mobilised and increasingly organised civil society in almost every Latin American country that is calling out corporate abuse and demanding regulation. In Peru, a coalition of civil society organisations drafted a proposal for a corporate due diligence law which received initial positive feedback from the Ministry of Justice.[34] A Brazilian civil society coalition drafted a framework law on human rights and business[35] which supportive members of parliament introduced to the House of Representatives in 2022.[36] In response to sustained civil society calls, the Chilean Undersecretary for Human Rights formally announced in June 2023 the drafting of a corporate due diligence bill, and initiated a multistakeholder consultation process.[37] In June 2024, a large number of Colombian civil society organisations launched a national campaign for a corporate accountability and access to justice regime.[38] This followed an impressive series of technical workshops and debates on different legal paths and regulatory alternatives involving members of government, academia and civil society.[39] The involvement, support and expertise of civil society are fundamental for a successful legal reform programme, and these are increasingly in place in the region.

## Conclusion

Latin America is lagging behind Europe and other Global North States when it comes to regulation. As stated earlier, they will still see their domestic companies, or companies operating in their territories, come under increasing pressure to implement due diligence measures in response to the demands of European and other companies subject to due diligence laws in their home States. Latin American countries have a decision to make: they either delegate their regulatory powers to foreign States, or develop their own normative and institutional frameworks based on their national realities and needs. Embarking on legislative processes after European and other States is not necessarily a bad thing and can actually prove advantageous, if local actors learn from and work to address the pitfalls of the European and other legislative processes and avoid gaps and limitations in the resulting laws.

Some of the proposals in this article may appear naïve, but Latin America is a region where the best and the worst of legal systems and culture often coexist,[40] and going for the best that the region can give is not unrealistic. In fact, some of the most seemingly radical tools and mechanisms to enhance protection of human rights and the environment in the context of business activity are already in place in the region, as described above. Drawing from these precedents, and the region's strong constitutional frameworks and human rights tradition, Latin American countries can develop robust corporate accountability frameworks, given the right political will. ◆

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## Notes

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COVER

# The ISDS imbroglio

While accountability for their misdeeds may currently be in short supply, there is no lack of rights and benefits enjoyed by corporations operating abroad. For example, companies can sue their host countries for lost profits in secretive tribunals established under the investor-state dispute settlement (ISDS) mechanism – a system where the state is put on the back foot and the public interest takes a backseat.

**Lean Ka-Min**




**A protest against an ISDS case being heard at the World Bank's International Centre for Settlement of Investment Disputes (ICSID).**

CONSIDER the following scenario: A planned hazardous waste management facility faces opposition from the local community because it is to be built on a geological faultline across from a dam near an environmental reserve, in a region already contaminated with arsenic from past mining activity. Construction continues anyway but the company concerned is eventually denied authorisation to operate the plant on public interest grounds. The aggrieved firm hauls the government before an international tribunal and is duly awarded over $40 million to be shelled out by taxpayers as compensation for expected future profits from the waste facility.

While this may seem like something out of a corporate executive's feverishly scrawled wishlist, it is precisely what happened after Spanish firm Abengoa was in 2009 denied a licence to operate a waste treatment plant on the environmentally fragile site in Zimapan, Mexico. Invoking rights under a bilateral investment treaty (BIT) between Spain and Mexico, Abengoa sued the Mexican government before a World Bank–based panel, which ruled that the licence denial constituted an indirect expropriation of the company's investment and breached the 'minimum standard of treatment' to which it was entitled.

The Spain-Mexico BIT is one of at least 3,000 active bilateral and multilateral treaties worldwide which provide for 'investor-state dispute settlement' (ISDS), allowing a foreign investor (which could be a company or an individual) to sue the host-country government for alleged violations of the treaty's investment protection provisions. The case is heard by an international arbitration tribunal, usually without the investor being required to have recourse to domestic courts or other domestic remedies beforehand.

These international investment agreements (IIAs) have their roots in the immediate postcolonial era after World War II, as former colonial powers pushed to safeguard their companies' interests in newly independent states in the Global South. Since then, more and more developing countries have signed on to IIAs under pressure from Northern governments and institutions and swayed by the promise that such accords would deliver increased inflows of investment and, with it, economic development.

In return for the 'privilege' of playing host to foreign investors, states are typically obliged under IIAs to grant these investors 'fair and equitable treatment' as well as protect them against 'discrimination' and direct and indirect expropriation. All these standards will of course need to be upheld, and this is where ISDS enters the picture.

The ISDS process commences when an investor claiming a treaty violation sends a notice of arbitration to the host state. Most ISDS cases are heard under the aegis of the World Bank's International Centre for Settlement of Investment Disputes (ICSID); other fora include the Permanent Court of Arbitration (PCA) based in The Hague and the London Court of International

Arbitration (LCIA). The arbitration tribunal is composed of three members: usually one member each is appointed by the investor and the state, while the tribunal president is jointly selected by both parties. The tribunal proceedings are normally conducted behind closed doors and can take years before a final decision is handed down.

From the outset, however, the entire system is stacked against the state party. In the first place, only investors can file treaty-based ISDS cases against states and not vice versa; thus, the state is always put on the back foot. Meanwhile, third parties – such as local communities that may be adversely affected by the investment project concerned – have little opportunity to make their voice heard, as the tribunals frequently reject or restrict third-party amicus briefs.

Furthermore, in considering the governmental action at issue, ISDS tribunals primarily use the relevant IIA's (investor-friendly) provisions as the yardstick. Thus, the fact that an action is consistent with domestic or other international laws (e.g., human rights and environmental treaties) is generally not deemed a defence against liability under the IIA. Likewise, an investor that has contravened domestic and other international law can still go on to win the ISDS case.

For example, American company Occidental Petroleum sued the Ecuadoran government under the Ecuador-US BIT in 2006 after the latter terminated its oil concession. Occidental had sold 40% of its production rights to another firm without government consent, thereby violating both its concession contract – which stated that an unapproved sale would invite termination – and Ecuador's hydrocarbons law, which set out the government's right to vet companies exploring for oil in the country. While the ISDS tribunal acknowledged that Occidental had broken the law and that the government's response was lawful, it nevertheless ordered Ecuador to pay the company an eye-watering $2.3 billion (subsequently reduced to $1.4 billion) for breaching the 'fair and equitable treatment' commitment under the BIT.

Occidental's conduct here bears the less-than-distinguished hallmarks of corporate chutzpah, recalling the classic example of a man who kills his parents and then pleads for mercy before the court on the grounds that he is an orphan. At the same time, the tortuous reasoning and interpretations employed by the panel in arriving at its decision in this case bring into focus the role of the arbitrators. The majority of ISDS cases draw from a small pool of arbitrators, most of whom are private lawyers who specialise in investment disputes. Some of these lawyers also 'double-hat', serving as arbitrator in one case and as counsel in another. There have been instances in which a lawyer representing one party argues their position by referring to a decision that was made by them as the arbitrator in a previous case. More generally, concerns over impartiality may arise in light of the fact that these arbitrators and lawyers earn handsome fees for their services and thus have an interest in the perpetuation of the ISDS system – a system where treaty-based cases are initiated only by the investor and whose use therefore depends on its continued attractiveness to investors.

No wonder, then, that the Nobel-winning economist Joseph Stiglitz has remarked about ISDS: 'If there ever was a one-sided dispute resolution mechanism that violates basic principles, this is it.'

One-sided or no, the system has already awarded $113.87 billion in payouts to investors, excluding the sums agreed in settlements reached outside the tribunal process. The average award amount has also shot up over time, rising over tenfold from $25 million in the 1994–2003 period to $256 million in 2014–2023, data from United Nations development agency UNCTAD reveals. By the end of 2023, damages of over $100 million had been awarded in more than a quarter of ISDS cases won by investors; one in 20 cases resulted in an award larger than $1 billion.

Such amounts are especially burdensome for cash-strapped governments in the Global South, depriving them of resources to fund essential public services, yet it is developing countries that are the most targeted by ISDS suits. In contrast, the vast majority of investor claimants come from high-income nations; no treaty-based ISDS case has ever been launched by an investor from a low-income country.

According to Columbia University's Center on Sustainable Investment (CCSI), ISDS tribunal rulings cannot be 'appealed' as such, unlike in domestic court systems, and are highly enforceable. If the government doesn't pay up, its assets almost anywhere in the world can be seized by the investor, such as by freezing bank accounts and confiscating state aircraft or ships. And even if the investor doesn't win the case, the state party still 'loses', usually finding itself saddled with a hefty legal bill and having to pay its share of the arbitration costs.

With such enormous sums at stake, other quarters want in on the action too. If you as a non-investor do not have standing to file a potentially lucrative ISDS suit, then the next best thing, so the logic goes, is to find and fund an investor who does. The increasingly widespread practice of third-party litigation funding sees a funder covering an investor's legal costs to initiate a case in return for a share in any monetary awards. Concern has surfaced that this could give rise to more 'marginal' or frivolous claims and unduly increase the amounts sought by investors, but third-party ISDS funding remains almost wholly unregulated.

There is certainly no shortage

of ISDS cases where governments and communities have had to pay a heavy price – monetary or otherwise – for standing in the way of investors' profit pursuit. Egypt was ordered in 2018 to fork out over $2 billion to the Spanish gas company Union Fenosa after it began prioritising domestic gas supplies for its own populace. After refusing to award a mining licence to the Tethyan Copper company, Pakistan was deemed liable for billions of dollars in damages. To avoid paying the huge amount, the government eventually greenlit the mining project, which had been stridently opposed by local communities. The plight of such communities caught between ecologically harmful investments and financially ruinous ISDS payouts is summed up by Aura Robles, an indigenous person affected by a controversial coalmine in Colombia: 'I can't grasp how the person that is hurting you can then come and demand millions of dollars.'

Even just the prospect of facing a big-money lawsuit can be enough to spook a government, deterring it from taking an action or adopting a policy that is in the public interest. Casualties could include environmental laws, public health policies, regulation of public services, measures to curb tax dodging, and intellectual property policies. For instance, the Colombian government in 2016 backed out of issuing a compulsory licence to break Novartis's patent monopoly on the life-saving leukaemia drug Glivec after the Swiss pharmaceutical giant threatened to drag the country to international arbitration. The licensing plan, by permitting production of generic versions of the medicine, would have brought prices down substantially and resulted in annual savings of an estimated $15 million for Colombia's public health budget.

Stung by its costly experience with the Occidental and other ISDS cases, Ecuador expressly prohibited international arbitration in its 2008 Constitution. It subsequently withdrew from ICSID in 2009 and, by 2017, had terminated all its BITs, in line with the recommendations of CAITISA, a commission of government officials, academics, lawyers and civil society groups which had undertaken an audit of these treaties. CAITISA president Cecilia Olivet said at the time, 'We hope other governments will learn from Ecuador's example and review their own investment agreements to find out if they are truly beneficial to their citizens.' The people of Ecuador themselves are on board with this approach, resoundingly reaffirming the constitutional proscription of ISDS in an April 2024 referendum.

Nor are IIAs necessarily favourites among rich countries either. Both the European Union and the United Kingdom withdrew from the Energy Charter Treaty – which, among other things, bestows ISDS rights to fossil fuel companies – in 2024. Worldwide, according to the Global ISDS Tracker website, more investment treaties have been terminated since 2017 than new ones concluded.

It is not difficult to see why there is a growing rethink of these agreements. CCSI finds '[e]mpirical evidence … does not show that [IIAs] actually stimulate new investments, let alone demonstrate whether those investments in fact benefit host (or home) countries'. Instead, buttressed by the enforcement muscle of the ISDS system, investment treaties have come to be branded as 'weapons of legal destruction' by no less an insider than the investment lawyer George Kahale III.

It is thus high time to be freed from the destructive dictates imposed by these neocolonial holdovers. In their place should come a recognition – with the domestic and international laws and instruments to match – that any investor rights must be balanced with responsibilities, and that laying the welcome mat for investors doesn't mean they can then trample all over the development aspirations of their host states. ◆

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# International law at a crossroads: Can Gaza spark a global reckoning?

The Gaza conflict has laid bare the toothlessness of international law, but it also presents an opportunity to forge a more equitable global order.

**Ramzy Baroud**

INTERNATIONAL law is fighting for relevance. The outcome of this fight is likely to change the entire global political dynamics, which were shaped by World War II and sustained through the selective interpretation of the law by dominant countries.

In principle, international law should have always been relevant, if not paramount, in governing the relationships between all countries, large and small, to resolve conflicts before they turn into outright wars. It should also have worked to prevent a return to an era of exploitation that allowed Western colonialism to practically enslave the Global South for hundreds of years.

Unfortunately, international law, which was in theory supposed to reflect global consensus, was hardly dedicated to peace or genuinely invested in the decolonisation of the South.

From the invasion of Iraq and Afghanistan to the war on Libya and numerous other examples, past and present, the United Nations was often used as a platform for the strong to impose their will on the weak. And whenever smaller countries collectively fought back, as the UN General Assembly often does, those with veto power, military and economic leverage used their advantage to coerce the rest based on the maxim 'might makes right'.

It should therefore hardly be a surprise to see many intellectuals and politicians in the Global South arguing that, aside from paying lip service to peace, human rights and justice, international law has always been irrelevant.

This irrelevance was put on full display through 15 months of a relentless Israeli genocidal war on Gaza that killed and wounded over 160,000 people, a number that, according to several credible medical journals and studies, is expected to dramatically rise.

Yet, when the International Court of Justice (ICJ) opened an investigation of plausible genocide in Gaza on 26 January 2024, followed by a decisive ruling on 19 July regarding the illegality of the Israeli occupation of Palestine, the international system began showing a pulse, however faint. The International Criminal Court (ICC)'s arrest warrants were further proof that West-centred legal institutions are capable of change.

The angry American response to all of this was predictable. Washington has been fighting against international accountability for many years. The US Congress under the George W. Bush administration, as early as 2002, passed a law that shielded US soldiers 'against criminal prosecution' by the ICC, to which the US is not a party. The so-called Hague Invasion Act authorised the use of military force to rescue American citizens or military personnel detained by the ICC.

Naturally, many of Washington's measures to pressure, threaten or punish international institutions have been linked to shielding Israel under various guises.

The global outcry and demands for accountability following Israel's genocide in Gaza, however, have once again put Western governments on the defensive. For the first time, Israel was facing the kind of scrutiny that rendered it, in many respects, a pariah state.

Instead of reconsidering their approach to Israel and refraining from feeding the war machine, many Western governments lashed out at civil society for merely advocating the enforcement of international law. Those targeted included UN-affiliated human rights defenders.

On 18 February, German police descended on the Junge Welt venue in Berlin as if they were about to apprehend a notorious criminal. They surrounded the building in full gear, sparking a bizarre drama that should have never taken place in a country that perceives itself as democratic.

The reason behind the security mobilisation was none other than Francesca Albanese, an Italian lawyer, an outspoken critic of the Israeli genocide in Gaza, and the current UN Special Rapporteur on the occupied Palestinian territories. If it were not for the UN's intervention, Albanese could have been arrested simply for demanding that Israel must be held accountable for its crimes against Palestinians.

Germany, however, is not the exception. Other Western powers, lead amongst them the US, are actively taking part in this moral crisis. Washington has taken serious and troubling steps not just to protect Israel, and itself, from accountability to international law, but to punish the very international institutions, judges and officials for daring to question Israel's behaviour.

Indeed, on 13 February, the US sanctioned the ICC's chief prosecutor due to his stance on Israel. After some hesitance, Karim Khan had done what no other ICC prosecutor had done before: issuing, on 21 November 2024, arrest warrants for two Israeli leaders, Prime Minister Benjamin Netanyahu and then–Defence Minister Yoav Gallant. They are currently wanted for 'crimes against humanity and war crimes'.

The moral crisis deepens when the judges become the accused, as Khan found himself at the receiving end of endless Western media attacks and abuse, in addition to US sanctions.

As disturbing as all of this is, there is a silver lining, specifically an opportunity for the international legal and political system to be fixed based on new standards, justice that applies to all, and accountability that is expected from all.

Those who continue to support Israel have practically disowned international law altogether. The consequences of their decisions are dire. But for the rest of humanity, the Gaza war can be that very opportunity to reconstruct a more equitable world, one that is moulded not by the militarily powerful but by the need to stop senseless killings of innocent children. ◆

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# The end of aid

The Trump administration's targeted shutdown of USAID would wipe out billions of dollars in development funding – it would also shutter an agency which did not always have the interests of its supposed beneficiaries at heart.

Laura Robson


USAID (CC BY-SA 2.0)

USAID's work 'has never been anything other than self-serving'.

A WEEK after his inauguration, US President Donald Trump's Office of Management and Budget issued an order for a 'temporary pause' on all activities 'related to obligation or disbursement of all Federal financial assistance', including foreign aid. Among other things, this directive had the effect of more or less immediately shuttering the work of the United States Agency for International Development (USAID), which in 2023 was responsible for distributing $43.8 billion in aid to more than 100 countries. All of its top-level officials were put on leave effective immediately, and most of its employees were told to clean out their desks. 'We spent the weekend,' Elon Musk bragged on X, 'feeding USAID into the wood chipper.'

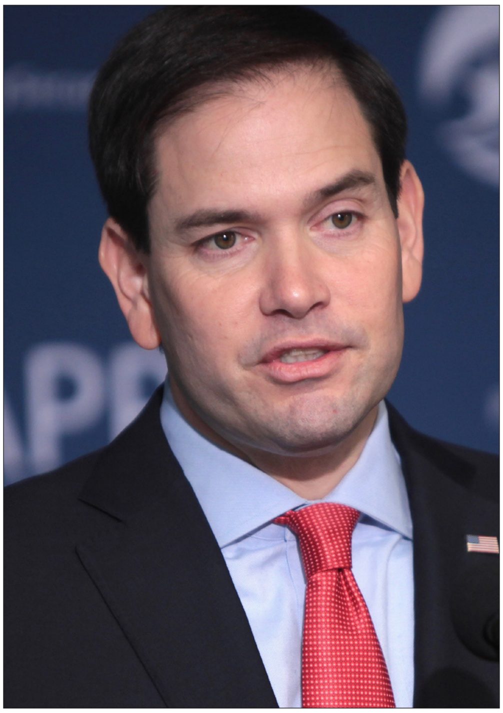
The liberal universe responded with characteristically impotent howls of complaint, which revolved around three main arguments. The first was that soft power of the kind USAID was designed to project around the globe was crucial to American 'security' and to maintaining minimal levels of international goodwill, especially vis-à-vis the nation's most dangerous geopolitical rivals. 'Shutting down USAID is not about efficiency – it's about undermining America's global leadership,' Democratic Senator Amy Klobuchar declared (on Musk's X, of course). It would 'make the world a more dangerous place for Americans and be a gift to China and Russia,' she added in another post. *The New Yorker* quoted a think-tank official involved in aid work in Liberia to drive the point home: 'It's not, at this moment, the Europeans who have the resources to fill the gap. It's countries like China.'

The second argument revolved around global health and medical threats, particularly those that could potentially reach the United States; these tended to highlight USAID's work in infectious disease monitoring and pandemic preparation, frequently focusing on the programme usually touted as the agency's biggest success story, the HIV treatment and prevention programme known as PEPFAR, which has delivered treatment to as many as 25 million people in 54 countries since its inception under George W. Bush. This kind of work, former USAID administrator Atul Gawande wrote, 'has doubled the life expectancy of all of humanity'; abandoning it would mean 'demolishing US standing, our world-leading capacity and expertise, and our national security.'

The third argument was more limited but arguably in some ways more heartfelt: the shutdown was a brutal punishment of the thousands of mostly American aid workers whose appointments were suddenly terminated. 'Some staffers wept as they carried out grocery bags and suitcases with what was left from their life's work,' PBS reported. *The New York Times* wrote sympathetically of the panic of USAID employees in postings abroad, quoting one who spoke to the effects on development work writ large: 'It just feels like the entire sector is sinking, and so how am I going to find a job?'

It is telling, and unsurprising, that the main arguments for USAID's continuation have had to do with its benefits to Americans. USAID – created by John F. Kennedy via executive order in 1961 – was explicitly designed around American interests and conceived as a way to help impoverished populations around the developing world to resist the siren call of Soviet-style communism. It belonged to the same Cold War moment as the Peace Corps, founded the same year and with many of the same purposes: 'to help people help themselves with the tools of peace,' as one early booster put it. But it would also use the tools of war, and not in the interests of its supposed beneficiaries. The early history of USAID demonstrated, above all, that the line between soft and hard forms of power could be very blurry indeed.

One of USAID's first and most paradigmatic incarnations, in wartime Vietnam, embodied all the contradictions of this politically aggressive form of humanitarianism. In 1962, the agency's newly appointed Deputy for Far Eastern Affairs invited a former CIA agent named Rufus Phillips to help it construct what officials called a 'civilian economic and social component to the counterinsurgency effort in Vietnam.' Upon his arrival, Phillips was briefed on the government of Vietnam's unfolding Strategic Hamlet Programme, envisioned as a mass forcible relocation of peasants into fortified work camps that would sever their ties with their lands and with the North Vietnamese forces, and remake them as modern entrepreneurial subjects able to participate in and benefit from an American-led global capitalist economy. (This scheme had some almost exact parallels in French-assaulted Algeria, with its so-called *regroupement* camps that sought to cut supply lines between Algerian fellaghas and the National Liberation Front on a premise of agricultural modernisation and developmentalist self-sufficiency.)


Gage Skidmore (CC BY-SA 2.0)

**US Secretary of State Marco Rubio (pic) announced in March that 83% of USAID's programmes would eventually be terminated and the rest absorbed by the State Department.**

In Vietnam, Phillips became the director of a new Office of Rural Affairs and Counterinsurgency, designed to support the hamlet plan and encourage local loyalties to and within these newly established units. 'Once this watershed of morale and spirit is crossed,' two of the programme's designers wrote in 1966, 'the Viet Cong fish begins to swim in a hostile sea.' Such operations purported to take material assistance and institution-building as their primary starting points, but also encompassed intelligence and police operations designed to further American military strategy.

This approach reflected more general practices at USAID, which at its inception incorporated and rebranded an older security programme run by the International Cooperation Administration as the agency's new Office of Public Safety. Throughout its first decade, USAID's OPS funded, armed and advised anti-communist military and police operations in more than 50 'at-risk' countries, from Latin America to Asia. 'In countering insurgency, the major effort must be indigenous,' ran an internal document describing the OPS's founding premise. 'In internal war it is always better for one national to kill another than for a foreigner – especially one with a different skin coloration – to do so.' In Vietnam, the OPS took over operations from a preexisting technical operation that among other things had been training police and paramilitary forces for the South Vietnamese since 1955.

Following USAID's more general commitment to supporting counterinsurgency strategies, the OPS made use of its humanitarian bona fides to introduce mobility restrictions for the populations receiving USAID assistance: surveillance, identity cards, checkpoints. In 1967, USAID was incorporated into a broader countrywide effort bringing together the US military, the CIA and humanitarian agencies operating under US auspices. Known as the Office of Civil Operations and Rural Support, it eventually became infamous for its 'Phoenix' programme targeting and 'neutralising' mostly civilian members of the Viet Cong – a programme made possible in part by this kind of USAID information-gathering, particularly on refugees.

The USAID Office of Public Safety was shut down in 1975 following a series of Congressional investigations in which detractors blasted it for, as Senator James Abourezk put it, deploying 'what is supposed to be a humanitarian program in a very inhumane way.' Perhaps in response to the backlash, USAID over the next decades began to move more and more of its operations – particularly the security-facing variety – into the private sphere. This approach tracked with the


US Air Force/Staff Sgt. Corban Lundborg

**One of the arguments advanced against USAID's shutdown has centred on the thousands of agency workers who would be laid off.**

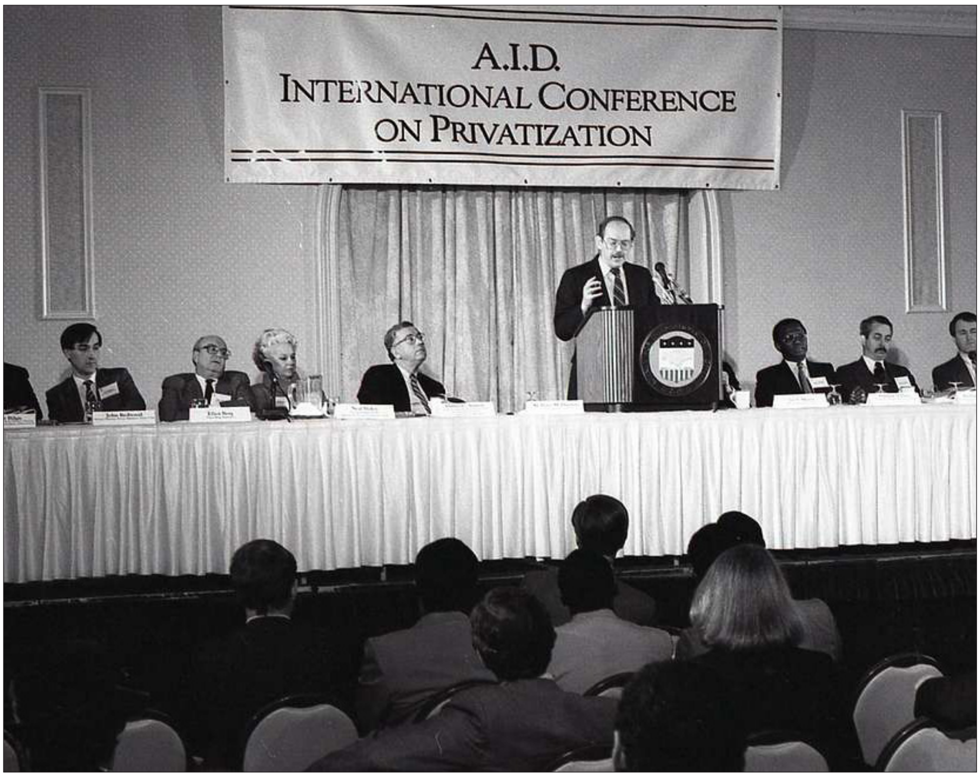
mood of the times; Richard Nixon had in fact considered shuttering the agency in the 1970s, bolstered by Henry Kissinger's pro-private-enterprise platform and a plethora of public-facing scholarship and commentary about the corruptions and inefficiencies of foreign aid.

But in the early 1980s, following Ronald Reagan's election, a former Peace Corps volunteer named Peter McPherson took on the administration of USAID with a promise to transform it into an agent of American-style neoliberalism, particularly in Latin America. He put forward a set of priorities he called the 'Four Pillars' to situate the agency's role and strategies: human resources, developing institutional capacity, science and technology, and expanding the private sector. 'Establishing these pillars was not only policy but a critical management/operational set of decisions,' he later told an interviewer. He made headlines and won further conservative support by eliminating USAID projects worth some $28 million and publicly presenting a cheque for the money to Reagan in a ceremony in the White House Rose Garden.

Less theatrically, USAID now became a kind of 'neoliberal counteroffensive' against communist influence: featuring a Bureau for Private Enterprise, conditioning aid grants on government commitments to industrial privatisation, and providing technical assistance to developing states on how to increase private investment and dismantle the public sector. This new commitment had very specific consequences in the sphere of public health, where the imperatives of privatisation produced an emphasis on 'pharmaceuticals in particular, especially vaccines and antibiotics, as emblematic technologies of international health,' as one scholar has pointed out – consistently privileging 'small-scale health technologies' over the kinds of more comprehensive, and potentially more meaningful, public health reforms that required state capacity. It also spearheaded a public relations campaign for the free market; from the mid-1980s, USAID partnered with neoliberal think-tanks like the Atlas Foundation to promote its vision of capitalist globalisation.

In 1986, the agency organised an International Conference on Privatization in Washington to workshop strategies for this new approach, which became a basis for its operations across Latin America and the Caribbean. USAID's assistance to Honduras, for instance, mainly served to enable mass privatisation efforts. 'The privatised companies include suppliers of cement, sugar, textiles, garments, hotels, milk, wood products, chemicals, pharmaceuticals, and transport services,' one account ran. 'Important government agencies were also abolished such as the National Housing Finance Agency and the second largest state-owned sawmill, the Forest Industry of Agua Fria was sold to a private investor for 2.75 million dollars.' When the Berlin Wall came down in 1989, USAID saw an opportunity to expand this privatisation to another sphere of the world on a mass scale.

Privatisation was happening on a different, internal level as well. USAID had just over 4,000 American employees in 1980; as they pressed for the cause of privatisation in their zones of operation, they witnessed the agency itself succumb to the same pressures. By the early 1990s, it was beginning to contract out more and more of its work to private companies, some of whose founders had begun their careers at USAID and then moved to the private sector. Chemonics – already a major partner for USAID – was a development contractor headquartered in Washington, DC, founded by a former USAID officer and Foreign Service member initially engaged with the unrolling of the agrochemical 'green revolution' in Afghanistan. Development Associates International had been founded in 1970 specifically to undertake agricultural consulting for USAID. Other corporate partners had military origins: for instance, Abt Associates, founded in 1965 to work with the State Department and the CIA on 'social, economic, and technological problems' using




**Peter McPherson, then administrator of USAID, speaking at the International Conference on Privatization in Washington in 1986. McPherson had taken the helm at the agency 'with a promise to transform it into an agent of American-style neoliberalism'.**

'interdisciplinary social science,' was running operations for USAID by the 1980s.

All of these were for-profit corporations, but USAID also began to work with non-profits, including one emerging from a USAID research grant in 1971. As private military contracting took over in other governmental spaces – particularly during and after the two Gulf wars – this trend towards outsourcing USAID work became more and more pronounced. As the former USAID administrator Carol Lancaster put it in 2009, 'USAID has left the retail game and become a wholesaler. In fact, it's become a wholesaler to wholesalers.' By 2001 the agency had dwindled to something like half of its 1980 staffing numbers, and most of its actual work was being undertaken by external contractors.

This brings us back to our contemporary debacle. If the first two defences of USAID mounted by liberal voices in the aftermath of Trump's massacre reflected a continued commitment to USAID's long track record as an arm of American empire, the third bemoaned the long-term effects of precisely the policies of privatisation and outsourcing that the agency worked tirelessly to implement in foreign spaces for so many decades. Part of the reason that thousands of USAID workers are now so easy to fire is that they are not government employees but contract labourers. The precarity that the agency spent decades promoting abroad has come home.

Following a sweeping six-week purge, Secretary of State Marco Rubio announced in March that 83% of USAID's programmes would eventually be terminated and the rest absorbed by the State Department. The Trump administration's abrupt shuttering of the agency is unquestionably illegal and undemocratic – and, perhaps, is really designed more to raise questions of domestic political authority and executive privilege than to alter America's role in the world. Still, in thinking about its actual consequences, we have to recognise that the agency's own work has never been anything other than self-serving. It has a long and disgraceful history of collusion with – and sometimes active participation in – colonial and neocolonial violence, and its promotion of a political economy of privatisation has for decades helped to produce an entire developmentalist sector made up of corporations who run state-funded enterprises for private profit.

More broadly, the point of this kind of 'assistance' is precisely that it is always driven by the needs, and subject to the whims, of the public-private partnerships providing it. For the entirety of its existence, the ever-present possibility of unilateral withdrawal represented a perpetual and pointed reminder of the hard power behind USAID's 'soft' version: in the end, its decision-making would take place far from the territories – and potentially without regard for the interests – of the recipients of its aid. The horrified liberal-internationalist reaction to the agency's sudden demise, featuring a redoubled insistence on a visible American global domination on the one hand and an emotive sympathy for American aid workers thrown into a severely constricted job market on the other, suggests strongly that most of its supporters have known this all along. ◆

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# Only political will can end world hunger

## Food isn't scarce, but many people can't access it

Hunger persists because we allow political and economic injustice to endure, laments *Jennifer Clapp*.

HISTORY has shown us again and again that, so long as inequality goes unchecked, no amount of technology can ensure people are well fed.

Today, the world produces more food per person than ever before. Yet hunger and malnutrition persist in every corner of the globe – even, and increasingly, in some of its wealthiest countries.

The major drivers of food insecurity are well known: conflict, poverty, inequality, economic shocks and escalating climate change. In other words, the causes of hunger are fundamentally political and economic.

The urgency of the hunger crisis has prompted 150 Nobel and World Food Prize laureates to call for 'moonshot' technological and agricultural innovations to boost food production, meaning monumental and lofty efforts. However, they largely ignored hunger's root causes – and the need to confront powerful entities and make courageous political choices.

To focus almost exclusively on promoting agricultural technologies to ramp up food production would be to repeat the mistakes of the past.

The Green Revolution of the 1960s–70s brought impressive advances in crop yields, though at considerable environmental cost. It failed to eliminate hunger, because it didn't address inequality. Take the US state of Iowa, for example – home to some of the most industrialised food production on the planet. Amid its high-tech corn and soy farms, 11% of the state's population, and one in six of its children, struggle to access food.

Even though the world already produces more than enough food to feed everyone, it's woefully misallocated. Selling food to poor people at affordable prices simply isn't as profitable for giant food corporations. They make far more by exporting it for animal feed, blending it into biofuels for cars or turning it into industrial products and ultra-processed foods. To make matters worse, a third of all food is simply wasted.

Meanwhile, as the laureates remind us, more than 700 million people – 9% of the world's population – remain chronically undernourished. A staggering 2.3 billion people – more than one in four – cannot access an adequate diet.

### Confronting inequity

Measures to address world hunger must start with its known causes and proven policies. Brazil's Without Hunger programme, for example, has seen a dramatic 85% reduction in severe hunger in just 18 months through financial assistance, school food programmes and minimum wage policies.

Our politicians must confront and reverse gross inequities in wealth, power and access to land. Hunger disproportionately affects the poorest and most marginalised people, not because food is scarce, but because people can't afford it or lack the resources to produce it for themselves. Redistribution policies aren't optional, they're essential.

Governments must put a stop to the use of hunger as a weapon of war. The worst hunger hotspots are conflict zones, as seen in Gaza and Sudan, where violence drives famine. Too many governments have looked the other way on starvation tactics, promoting emergency aid to pick up the pieces instead of taking action to end the conflicts driving hunger.

Stronger antitrust and competition policies are vital to curb extreme corporate concentration in global food chains – from seeds and agrochemicals to grain trading, meat packing and retail – that allow firms to fix prices and wield outsized political influence.

Governments must also break the stranglehold of inequitable trade rules and export patterns that trap the poorest regions in dependency on food imports, leaving them vulnerable to shocks. Instead, supporting local and territorial markets is critical in helping build resilience to economic and supply chain disruptions. These markets provide livelihoods and help ensure diverse, nutritious foods reach those who need them.

Mitigating and adapting to climate change requires massive investments in transformative approaches that promote resilience and sustainability in food systems. Agroecology – a farming system that applies ecological principles to ensure sustainability and promotes social equity in food systems – is a key solution, proven to sequester carbon, build resilience to climate shocks, and reduce dependence on expensive and environmentally damaging synthetic fertilisers and pesticides.

More research should explore agroecology's full potential. And we must adopt plant-rich, local and seasonal diets, ramp up measures to tackle food waste and reconsider using food crops for biofuels. This means pushing back against Big Meat and biofuel lobbies, while investing in climate-resilient food systems.

This is not to say that technology has no role – all hands need to be on deck. But the innovations most worth pursuing are those that genuinely support more equitable and sustainable food systems, and not corporate profits. Unless scientific efforts are matched by policies that confront power and prioritise equity over profit, hunger is likely here to stay.

The solutions to hunger are neither new nor beyond reach. What's missing is the political will to address its root causes.

This message is shared by my colleagues with the International Panel of Experts on Sustainable Food Systems, IPES-Food, whose work covers a range of expertise and experience. Hunger persists because we allow injustice to endure. If we are serious about ending it, we need bold political action, not just scientific breakthroughs. ◆

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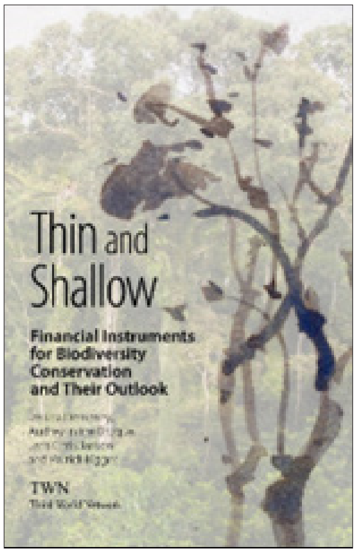
# Thin and Shallow: Financial Instruments for Biodiversity Conservation and Their Outlook

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This paper examines the track record of private financial mechanisms aimed at funding conservation of biological diversity. It finds that, due to lack of rigorous and consistent benchmarks and monitoring, these investments may not necessarily safeguard biodiversity and could even, in some cases, have adverse impacts. Further, despite decades of attempts to draw private capital to biodiversity protection, the quantum of finance remains limited, especially in the highly biodiverse countries of the Global South where it is most needed.

Written for a research project established by a group of central banks and financial supervisors, this paper cautions these authorities from deploying resources towards promoting such biodiversity-focused private financial instruments. Instead, the supervisory bodies are urged to step up policy coordination to address drivers of biodiversity loss in the financial system.

Available at: https://www.twn.my/title2/books/pdf/Thin%20and%20shallow.pdf

# The forgotten victims: Orphans of femicide in Colombia

In the face of the femicide crisis in Colombia, a second crisis persists: hundreds of children are left orphaned each year and without support from the state.

**Anna Abraham, Tony Kirby and Sergio Alejandro Melgarejo García**

THE week after Mother's Day 2022, Camilo Beltrán received a devastating call from his mother at 3 a.m. His sister, Leidy Beltrán, had been murdered. At first, he couldn't believe it. 'I had spoken to her that morning,' Camilo recalls. But the reality was undeniable: Leidy's partner had stabbed her in the heart in a fit of jealous rage.

Camilo Beltrán works as a teacher and lives in Kennedy, Bogotá. He remembers his sister as a diligent woman dedicated to her family. One of her dreams was to see her two daughters grow up, finish school and attend university. But on 12 May 2022, that dream was shattered when Leidy was murdered, and Camilo suddenly became the guardian of her daughters, who were then only four and 10 years old. The two girls are among many children left orphaned by a growing number of femicides in Colombia.

Before her murder, there were warning signs. Leidy's partner had shown possessive and jealous behaviour, frequently monitoring her movements through video calls. Despite concerns raised by Camilo, Leidy insisted that things were fine. However, her life was cut short by her partner, Waldo Morales, who initially attempted to evade responsibility for the crime until security footage exposed the truth.

'We fought tirelessly to ensure justice, but because Morales turned himself in, his sentence was reduced,' Camilo explains.

After Leidy's death, Camilo and his parents sought custody of Leidy's daughters, now aged seven and 12. The process involved several interviews with the minors. Alongside his girlfriend, Camilo embraced the challenge of raising them, saying he never hesitated about assuming guardianship. The girls, particularly the youngest, faced significant emotional struggles. Initially, they were told their mother was unwell. But they found out the truth through social media, Camilo noted. Deeply affected by the tragedy, the younger girl began recounting the exact circumstances of her mother's death to everyone she met.

The emotional toll on the family has been immense. 'There's no psychological or financial support from the state. The only help we received was three months of therapy for the younger girl, and that was it,' Camilo says. 'The state isn't prepared to address what happens after a femicide. It doesn't ask if these children are okay.' In addition to emotional stress, the economic consequences are also immense. Before the femicide, Camilo enjoyed using his income for hobbies like bike riding and travelling. Now, he invests in his sister's daughters, on things like food or medical support. In the future, he would like to earn a master's degree, but with the present situation, he will have to save longer.

Despite the challenges, his nieces remain a source of strength for Camilo. 'They've become the reason my parents and I keep going,' he says. With the support of his girlfriend, he's learning how to navigate parenting challenges, from managing teenage mood swings to addressing the girls' trauma.

## A persistent state crisis

According to the NGO Observatorio del Feminicidio in Colombia, 815 femicides were reported in 2024 alone in the country; the Attorney-General acknowledged 640 cases by November. The discrepancy in the number of cases stems from different definitions of femicide. Many victims leave behind children, but no one knows the exact number.

The NGO attempts to estimate the number of orphans of femicide by counting each instance in which a news report mentions that a murdered woman was a mother or states how many children she left behind.

While femicide was codified as a crime in Colombia with the passage of the 'Rosa Elvira Cely' law in 2015, there is still no official registry or state support for the children of victims. This systemic failure leaves hundreds of children facing deep psychological and economic hardships.

Under Colombian law, femicide is defined as the killing of a woman due to her gender identity and carries a minimum penalty of 250 months in prison. The law also mandates the creation of a femicide registry to track this persistent issue in Colombian society. However, there is no registry to document the children orphaned by these crimes. Additionally, 73% of femicides in Colombia between 2021 and 2023 went unsolved, according to the Red

Nacional de Mujeres, highlighting a stark gap between the law's intent and its enforcement.

'Regarding access to justice, a lot of work needs to be done,' Congresswoman Carolina Giraldo Botero stated, underscoring the gap between legislative intent and practical implementation. She sees the high workload the Attorney-General faces as a possible explanation for the low rate of cases that have been successfully solved.

Psychologist Lorena Santana, who works with orphans of femicides, states, 'Femicide affects the whole community. An orphan of a femicide is normally a victim of two parts: a mother who dies and a father who is the aggressor and who is in prison. The children are emotionally affected, depressed, anxious and aggressive.'

## 'No one has thought about what happens to the children'

Camilo remembers how he marched in protests against femicides himself as a young student of the Universidad Pedagogica Nacional. 'But I would have never thought I would live through it so closely,' he says. His personal tragedy has driven him to activism. He's now part of Huérfanos por feminicidio Colombia (Orphans of femicide in Colombia), a collective advocating for legal recognition and support for children orphaned by femicide.

Camilo's advocacy extends beyond political activism. He also regularly supports other families affected by femicide, offering guidance from his own experience and emotional support. 'I speak with them because I understand what they're going through. Sometimes, just listening makes a difference,' he says.

The collective also organises activities for orphaned children to help them process their grief. 'The goal is to bring a smile to their faces, even if just for a moment,' Camilo explains. For instance, they meet to share food to get to know them. One member of the group also has a specialisation in social management, which helps them connect with the orphaned children.

In August 2023, Congresswoman Botero led efforts in Congress to propose a bill that would ensure economic and psychological support for children of women killed by femicide. 'So far, no one has thought about what happens to the children, many of whom are left in situations of poverty or extreme poverty,' Botero emphasises. Other countries, such as the Dominican Republic, Mexico, Argentina, Peru and Bolivia, have already made progress in this area. For example, Argentina has enacted Ley Brisa, which provides economic support to the children of femicide victims until they turn 21.

Among the most important points of the bill Botero proposes are the establishment of a registry, free psychological assistance, and providing orphans with resources to continue their education, such as preferential access to public schools and sports workshops. The proposal also includes one-time economic support for the funeral and monthly stipends for the minors of at least 456,000 pesos (approximately $110). Leidy's children would not benefit from the law economically anymore, as it would not be retroactive.

Nearly a year and a half has passed since the bill's initial proposal. Marcela Boyacá Mesa, co-founder of Huérfanos por feminicidio Colombia, hopes it will be approved soon. 'In the first place it is a recognition of the existence of the population, of a problem and the intention to provide solutions.' The draft has already passed two debates in the House of Representatives, but two debates in the Senate are missing – if they do not occur by the end of the legislative period on 20 June, the project will expire. 'We are asking with all of our heart that the proposal will be discussed soon, so we do not lose all this work,' says Botero.

'We need a cultural change. Because we have a lot of machismo in our society. That is why there are so many femicides,' explains Botero. She also emphasises the importance of gender-based violence prevention. In addition to femicides, rates of domestic violence are high in Colombia. For instance, the city of Bogotá reported 42,000 cases of domestic violence in 2024. Last year, one woman was killed by a former partner in a mall, witnessed by many visitors.

In 2023, Colombia even declared a public emergency for gender-based violence. To help women understand the first signs of violence, the government has introduced the concept of the 'Violontometro', a tool helping women assess the level of gender violence on a scale from yellow (hurtful jokes) to red (physical attacks or threats of murder). The 'Purple Hotline' in Bogotá also offers instant psychological assistance or police protection for those who experienced gender-based violence. However, there are presently no long-term programmes specifically designed for the orphans of femicide.

But Congresswoman Botero is determined to see the proposed law become a reality. She plans to support prevention, which for her includes teaching women about the signals of violence and, more importantly, working with men to reflect on their role in society. 'No children should have to grow up without their mothers.' ◆

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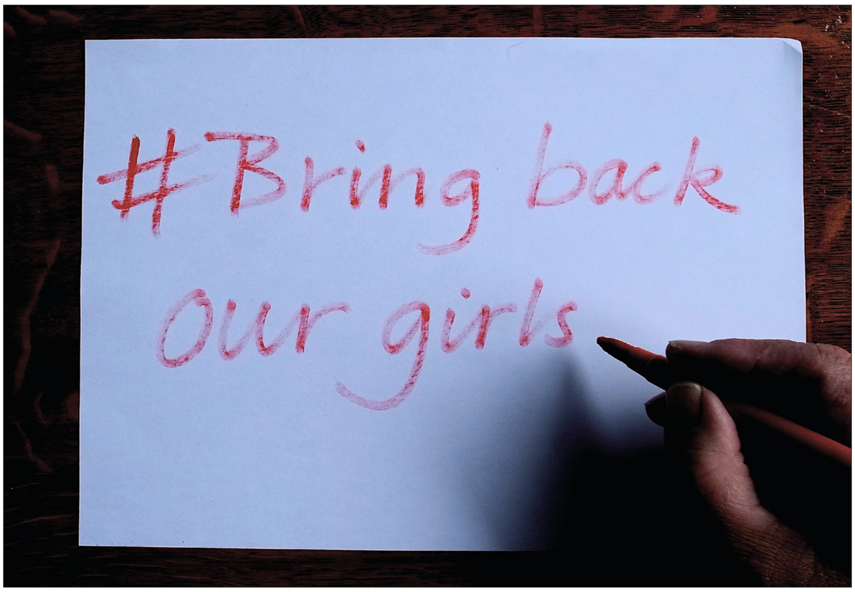
*The above article is reproduced from nacla.org, the website of the North American Congress on Latin America.*

# Hashtags alone will not safeguard women's lives and rights

The #BringBackOurGirls campaign raised questions around the efficacy of using social media to promote gender equity.

Tegan Zimmerman and Adebola Esther Osegboun






**Examining the hashtag #BringBackOurGirls brings the complexity and contradictions of online social justice activism to the forefront.**

IT has been a little over a decade since 270 female students were kidnapped from a school in Chibok, Nigeria, by the extremist armed group Boko Haram. While many of the girls escaped, were rescued or were released in exchanges, many others remain missing or feared dead.

Around 90 of the girls have not been brought back and more than 30 parents have died while hoping for their children's return. Since the Chibok abduction, more than 1,680 schoolchildren have been kidnapped in Nigeria.

The mass kidnapping shocked many around the world and spurred efforts to raise awareness, with the hashtag #BringBackOurGirls coming to symbolise public outrage.

Women's activism in recent decades has relied on and taken up digital technology in varied and complex ways. With an ability to reach millions across the world in a short timespan, social media has arguably provided an unprecedented means for solidarity and activism.

However, the hashtag exemplifies the less often-recognised risks and detriments of relying on social media to promote and attain gender equity and social justice. The theme of this year's International Women's Day, #AccelerateAction, provides an opportunity to look back on #BringBackOurGirls and question the efficacy of using social media to achieve gender parity.

## Mobilising #BringBackOurGirls

Women have often found ways of mobilising even when political space is restricted. In Africa, for example, the history of colonialism has shaped the postcolonial political landscape and incontrovertibly influenced how social justice movements are organised.

Despite obstacles and challenges, particularly from governments, women in Africa have organised in significant ways to fight for their rights, including playing crucial roles in the struggles for economic and political independence across the continent.

While some movements are formally organised, others, like #BringBackOurGirls, have been issue-based. As sociology professor Temitope Oriola writes, they 'reflect the role contemporary, women-led social movements in Africa play in reshaping institutional and non-institutional actions, beliefs and practices'.

The2014#BringBackOurGirls campaign in Nigeria brought together people from diverse backgrounds to demand action against Boko Haram.

Nigerian lawyer Ibrahim Abdullahi was the first to use #BringBackOurGirls on 23 April 2014 after hearing a speech by former Nigerian Education Minister Obiageli Ezekwesili. The hashtag caught the eye of Def Jam Recordings co-founder Russell Simmons. Simmons tweeted '234 Nigerian girls have gone missing, and no one is talking about it … Please RT! #BringBackOurGirls.' As a result, efforts in response to the kidnapping quickly went global, garnering support from the likes of Barack and Michelle Obama, Oprah Winfrey and former Nigerian president Goodluck Jonathan.

This transnational movement was anchored in a notion of freedom from injustice, particularly amid gender-based violence, human rights violations and systemic government failure. The movement was also informed by shared lived experiences and the use of digital media, which inspired international solidarity.

However, the #BringBackOurGirls movement raised several issues around identity, particularly in terms of Western saviourism. As literary theorist and feminist critic Gayatri Chakravorty Spivak writes in her oft-quoted phrase: 'White men are saving brown women from brown men.'

Race and gender were especially important identity markers for some in the West lending their support to the cause. In addition, the role of Islamophobia as another factor cannot be discounted.


Moki Edwin Kindzeka (VOA)

**Despite obstacles and challenges, women in Africa have organised in significant ways to fight for their rights.**

## The limits of hashtag feminism

There is of course immense value when activists across the world join forces to combat injustice, but we cannot ignore the tendency of some in the Global North to portray women in the Global South as permanent victims. As migration researcher Heaven Crawley puts it: 'Women from the Global South are typically understood and represented through a neo-imperial frame as disempowered, helpless "victims" or as "Exotic Others" who need to be rescued from their "backward" cultures.'

Examining the hashtag #BringBackOurGirls brings the complexity and contradictions of online social justice activism to the forefront. On the one hand, it unequivocally brought a sense of urgency in returning the girls to their families. It also brought worldwide attention to a terrorist organisation that operates across borders (in Chad, Cameroon, Niger and Nigeria) and threatens the stability and sovereignty of several nations, not to mention the African continent.

On the other hand, there is an unacknowledged history of colonial ownership over women's bodies, which supports a logic of complicity with the image of women in the Global South needing saving. Similarly, the stereotype that Black and Muslim men commit violence against women is reinforced.

The #BringBackOurGirls movement was successful in calling on the Nigerian government to take action and in garnering attention globally. However, the momentum faded over time.

Legal scholar Catharine MacKinnon's chapter on #MeToo in the book *Gender Violence* offers a more optimistic view of the efficacy of hashtag feminism.

However, we argue that social media, which functions on algorithms and user engagement (likes, views, purchases, for example), cannot do what legal and policy change can – bring about real, meaningful socioeconomic and political improvements for women.

Even when supporting a wide range of people and communities, social justice campaigns cannot overcome the exploitative and capitalist (not to mention white male ownership) underpinnings of social media. Movements like #BringBackOurGirls are vulnerable to losing audience interest, and while at their peak, can be co-opted by corporations to boost revenues.

The simplicity and superficiality of hashtags neither readily lend themselves to feminist causes nor were they designed to be feminist tools. According to the International Women's Day official website, 'it will take until 2158 … to reach full gender parity.' Such parity will not come about through hashtags, whether it's #BringBackOurGirls, #MeToo or even #AccelerateAction.

Social change is possible, however, by building solidarity through active grassroots organising, community outreach, protesting against unfair policies and systems, and sharing knowledge that crosses borders and cultures. ◆

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CULTURE

# Remembering is not enough

The Oscar-winning film *I'm Still Here* shines welcome light on the dark days of the military dictatorship in Brazil, but much remains to be done before this terrible chapter in the country's history can truly be closed.

**Frederico Freitas**


***I'm Still Here* director Walter Salles and lead actress Fernanda Torres at the film's London premiere in October 2024.**

AMONG the earliest memories from my childhood in Brazil in the 1970s is staying in my uncle's bedroom at my grandparents' condo. Every year, we visited them in Belo Horizonte for the Christmas holidays. In that bedroom, I could see my uncle's clothes hanging in the closet, the papers on his desk, and the works of political and sociological theory on the shelves. Even before I could read, I loved looking at those books with strange covers, so different from the ones at home. But I never met my uncle. Carlos Alberto Soares de Freitas, my father's baby brother, vanished in 1971 at the age of 31 – a victim of the military dictatorship that ruled Brazil from 1964 until 1985.

*Ainda Estou Aqui* (*I'm Still Here*), the new film by the accomplished Brazilian filmmaker Walter Salles, explores a story similar to my uncle's. It has already become one of Brazil's most popular films of all time. It has also attracted international attention: it won the Best International Feature Oscar at the Academy Awards, and its lead performer, Fernanda Torres, won the Golden Globe for Best Actress and was nominated for the Academy Award in the same category. At a moment when the far right in Brazil is attempting to redefine the country's memory of the dictatorship, the film defies this revisionism. It also, however, suggests a tidier closure to the disappearances than many real families have experienced.

Carlos Alberto, my Tio Beto, was a student activist when, in 1967, he went underground to join the urban guerillas resisting Brazil's military dictatorship through armed struggle. He eventually became one of the leaders of the Palmares Armed Revolutionary Vanguard (Vanguarda Armada Revolucionária, or VAR-Palmares), a merger of two other armed groups – and the organisation to which Dilma Rousseff, who became the president of Brazil decades later, also belonged.

In his early years living underground, Tio Beto would visit my grandparents unannounced in the middle of the night. But by 1969, his visits stopped, as those escapades became too risky. The military government had included his picture, alongside other wanted 'terrorists', in posters it circulated through airports, bus stations and police stations. His position as the head of one of the remaining underground armed groups guaranteed that the government was prioritising his capture. Still, Beto continued to find ways to send messages to his relatives to let them know that he was alive and well.

By 1971, however, these messages also stopped. After seeing a wanted poster with Beto's picture crossed out at a police station, one of his brothers started to suspect that he had been captured. A few days later, his family received a letter, preemptively written by Beto with instructions to be delivered to his parents by people in his clandestine network. It read: 'This letter will only be sent to you if I am imprisoned. The way it reaches you does not matter.'

This was the beginning of a quest that, as of 2025, remains unresolved. Throughout the 1970s and 1980s, Beto's parents and siblings relentlessly searched for information about him. Initially, they sought to confirm whether he had been arrested and, if so, where he was being detained. They visited various police stations, military barracks and prisons throughout Brazil. Everywhere they went, officials denied that Beto had ever been there but suggested rumours that he might be detained in another facility in a distant city. Through such deliberate equivocation, they made my family run in circles, hoping they would eventually give up.

My father's side of the family was middle-class and had political contacts in the state of Minas Gerais, so they contacted an extensive network to find any information about my uncle's whereabouts, but to no avail. Military officers and politicians lied to their faces, saying that my uncle had not been arrested and that they had no idea where he was. One officer, General Otávio Aguiar de Medeiros, the head of the National Information Service, warned my aunt Adi in a private meeting that the military would go after her children if the family continued digging into her brother's fate.

By the time I remember visiting my grandparents and staying in my uncle's bedroom as a kindergartener, most of the family had already accepted that Beto would probably never come back. In 1979, an amnesty law freed many of the country's political prisoners and allowed the return of political exiles, but my uncle was not among them. My father and his siblings began to believe it was likely that he had been executed by the military. But my grandparents never lost faith. In the years after he disappeared, they never changed the front door lock and kept his bedroom intact, almost as a shrine, hoping he would return in the middle of the night. They kept that hope until they passed in the 1980s.

In the years that followed, my family pieced together what had happened to my uncle from fragments of information gathered from various sources. He was arrested by security agents in February 1971 in Ipanema, Rio de Janeiro. He was then taken to a newly established clandestine torture centre run by the army in the old imperial resort town of Petrópolis, nestled in the mountains near Rio de Janeiro. Once at the torture centre, dubbed the Casa da Morte (House of Death), Beto was tortured for two months before being executed. His body, disposed of in an unknown location, has never been found. All but one of the Casa da Morte's prisoners, a woman named Inês Etienne Romeu, were executed. Romeu managed to escape, and later, with the support of one of Beto's cousins, Sérgio Ferreira, played a crucial role in exposing the existence of the torture centre after Brazil's return to democratic rule in 1985. She made a point of visiting my Aunt Adi, who had spent years searching for information about her brother, to tell her that she had seen him alive at the Casa da Morte and had heard about his torture and execution while she was there.

The story of Tio Beto was ever-present in my family and influenced my own interest in Brazil's turbulent history. *I'm Still Here* may do something similar for people too young to remember the dictatorship. The film tells the true story of Rubens Paiva, a former left-wing congressman who, after being forcibly removed from office and fleeing the country at the onset of the military dictatorship in 1964, returned to Brazil to live a civilian life as a civil engineer – until he was arrested and disappeared by the dictatorship in 1971.

The film centres on the quest of Paiva's wife, Eunice, to find information about his whereabouts. There are many parallels between the Paivas' story and that of my own family. Both Paiva and my uncle were illegally arrested, tortured and executed by the state, whose agents then denied ever detaining them. In Paiva's case, the cynicism and deceit was even more outrageous – as depicted in the movie, his family watched as he voluntarily put on a suit and tie and drove his own car alongside a plainclothes agent to the military detention centre, only for an officer to lie to his wife's face a few weeks later, claiming he had never been there – all while they stood next to Paiva's parked car in the centre's parking lot. The movie also shows Eunice, who was also arrested for a few days and interrogated alongside her teenage daughter, spending months trying to find information and file a habeas corpus for a person the state officially denied ever arresting. Similar to my family, Eunice Paiva finally gets confirmation of her husband's execution at the hands of the military from a friend and left-wing militant who visits her one night bearing the ominous news.

*I'm Still Here* is a superbly crafted entry in the small subgenre of movies about political disappearances. Like some of the best films in this category (in particular the greatest among them, the 1985 Argentine feature *The Official Story*, winner of the Oscar for Best International Feature), *I'm Still Here* shines in its depiction of the contrast between the normalcy of quotidian life and the abnormality of life under a military dictatorship.

In the movie, the Paiva teenagers live a happy, carefree life of family gatherings, car outings and beach volleyball games – their home is just across from the beach in Leblon, Rio de Janeiro – until everything is disrupted by Rubens Paiva's arrest and subsequent disappearance, followed by his wife and daughter's arrest and, later, constant surveillance by the regime's thugs. Fernanda Torres's Eunice Paiva sits unquestionably at the centre of the narrative and is the driving force that propels the movie forward, but these disruptions are largely seen from the perspective of the Paiva children. As the film progresses, they experience the ever-increasing intrusion of a state guided by a national security doctrine that views anything associated with left-wing ideas – including, by extension, the children themselves – as a pollutant that must be purged and destroyed.

The film, however, has its flaws. Its director, Walter Salles, is a billionaire and heir to a Brazilian banking family, and many of his films – such as *Central Station* (1998) and *The Motorcycle Diaries* (2004) – convey an overly didactic and humanistic message that betrays a certain naïveté. Salles portrays his protagonists as almost superhuman in their unwavering nobility, stripping them of contradictions and weaknesses. Their virtues enable them to face adversity with a dignity that, to a critical eye, borders on the implausible. *I'm Still Here* doesn't entirely fall into this trap, but it comes close – particularly in its successive epilogues set in the 1990s and 2020s, which almost give the impression of redemption or a happy ending.

One such moment is the issuance of a death certificate for Rubens Paiva in the '90s epilogue, which suggests a sense of closure. Yet the human rights violations of the military regime are far from a closed chapter in Brazil's history. Many, like my uncle, have yet to receive a death certificate or a formal government apology that could provide recognition to their families. More important, none of the country's perpetrators of human rights abuses – including torture and extrajudicial executions – have ever spent time in jail, in stark contrast to neighbouring Chile and Argentina, both of which prosecuted and imprisoned some of those responsible for atrocities during their military dictatorships. The second epilogue closes the movie on an overly rosy note, depicting an elderly and frail Eunice (played by Torres's mother, Fernanda Montenegro) who, despite suffering from Alzheimer's and being unable to recognise her adult children, reacts to a picture of her late husband, Rubens, on television. As in many of Salles's other film endings, this moment feels like a cheap attempt to manipulate the audience into tears.

But the film has struck a nerve with the Brazilian public. *I'm Still Here* shattered national box office records, drawing over 4 million people to theatres. It is the highest-grossing film since the pandemic and now ranks among the top 10 box office hits of all time in Brazil – a list largely dominated by religious biopics and light-hearted comedies. Much of its success stems from its role in shaping the debate over the interpretation of the country's 21 years of military rule.

After the dictatorship ended, the democratic opposition largely controlled the narrative. Three of the presidents elected thereafter – Fernando Henrique Cardoso, Luiz Inácio Lula da Silva and Dilma Rousseff – had been arrested for political reasons during the military regime. Rousseff was even tortured while in captivity. Beyond the political class, many academics, intellectuals and artists were persecuted by the military, with some living in exile and returning during the restoration of democratic norms. In the 1990s and 2000s, their critical view of the dictatorship was hegemonic in Brazilian society, shaping the predominantly negative portrayal of military rule across K-12 education, the media and the arts.

Cinema is a good example. Since the '90s, Brazil has produced a series of arthouse films, such as *Lamarca* (1994), *Four Days in September* (1997), *The Year My Parents Went on Vacation* (2006), *Baptism of Blood* (2006) and *Marighella* (2019), that focus on those who fought against the dictatorship and were affected by its violent repression. Even popular television series and soap operas portrayed the military dictatorship through a dark lens, depicting young people being arbitrarily arrested and tortured by the regime. Shows such as *Anos Rebeldes* (1992), *Senhora do Destino* (2004–05), *Queridos Amigos* (2008), *Amor e Revolução* (2011–12) and *Os Dias Eram Assim* (2017) helped cement in the public consciousness the idea that there was nothing redeemable about the military years.

However, the rise of the far right in Brazil, marked by Jair Bolsonaro's election as president in 2018, triggered a reaction to this narrative. Bolsonaro, a former army captain whose formative years took place during the end of the dictatorship, had spent his decades-long political career as a member of the lower house praising the military regime. If anything, he criticised it for not having killed enough leftists. Many young people who had no memories of living under a repressive regime that censored the media and policed youth mores became convinced that things had been better during that time. Even members of the working class – including the poor, black and brown communities, who today suffer from a legacy of police brutality greatly expanded during the dictatorship – suddenly became willing to accept the myth of a military era devoid of urban crime and corruption.

In this sense, the success of *I'm Still Here* in Brazil can be understood as part of the renewed debate about the legacy of the dictatorship. The movie's didactic tone and depiction of the impact of human rights violations on young people – Paiva's children – seem tailor-made to educate generations of Brazilians born after the regime about the gruesome realities of life under it: the lack of liberties, the arbitrariness of state agents. Much of that state violence persisted after the dictatorship ended, primarily affecting black and brown youth in large cities and the countryside. *I'm Still Here* presents a time and place when that kind of state violence impacted not only the working class but also the children of the upper-middle class, like the Paivas.

When asked about the movie's

success, Bolsonaro – who famously spat on a bust of Rubens Paiva while serving in the Brazilian Congress – responded that he would not waste his time commenting on a film that, in his view, wrongly glorifies the life of someone who was a ‘communist’ and a ‘bum’. Bolsonaro has been indicted for orchestrating a failed coup, with support from the military, against newly reelected President Lula. As part of their efforts to build momentum for the coup, Bolsonaro’s inner circle launched a coordinated attack by right-wing militants on Congress and the presidential palace in Brasília on 8 January 2023, mimicking the assault on the US Capitol on 6 January 2021.

It is in this context – of a literal attack on democratic norms and institutions by a former president who built his political persona on praising and calling for the return of the military dictatorship – that the reason for the success of *I’m Still Here* in Brazil becomes clearer. When First Lady Janja Lula da Silva spoke at the commemoration of the second anniversary of the coup attempt on 8 January, she made a point of connecting the movie’s success to the rejection of military dictatorship revisionism: ‘Art and freedom are inseparable. There has never been a moment in history when authoritarian actions occurred without our artists raising their voices. That is what our country has best: our people. A great example of this is our dear friend Fernanda Torres receiving an important award for *I’m Still Here*, portraying a strong and determined woman in a film that recalls a sad and dark part of our history that we must never forget.’

*I’m Still Here* has renewed interest in a history that, while not entirely forgotten, has been fiercely contested by far-right revisionism in recent years. Still, remembering is not enough. As evidenced by my family’s unresolved quest to uncover the truth about my uncle – whose body has never been recovered and whose torturers and murderers have never been prosecuted – much remains to be done before this dark chapter in Brazilian history can truly be closed. ◆

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# India's free library movement counters caste discrimination and authoritarianism

A network of activists in India is setting up libraries as spaces of equality and empowerment.

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**Emily Drabinski**

OUTSIDE the Khirki branch of Delhi's Community Library Project, a signboard details the day's programmes, including scheduled story times and art activities. Children bounce and buzz as they wait in line to check out their books. Patrons take advantage of clean public bathrooms, drinking water (in short supply in many of Delhi's unplanned communities) and Internet-connected laptops. This library feels more like my home Windsor Terrace branch of the Brooklyn Public Library in New York than it does the Delhi Public Library a few kilometres away. The biggest difference? Anyone can join the Khirki library for free, while the Delhi Public Library charges 100 rupees a year. It's a number too small to make a meaningful difference to the library budget, and too large for the poor and working class who make up much of the city – a nominal figure that serves only to exclude.

Changing this system is the singular priority of India's Free Libraries Network (FLN). 'The mandate to be free is one of the most important demands we are making,' Prachi Grover said. Grover is part of a network of grassroots activists and practitioners pushing for changes to the country's public library system under the banner of FLN, a consortium of more than 100 community libraries and individuals founded in 2019. Group members are committed to the development of free public libraries open to all Indians, regardless of gender, class or caste.

In December, the group launched its People's National Library Policy at an event held at Delhi's India International Centre. Community organisers, legislators, librarians, booksellers, authors and the interested public gathered to learn more about the network and its legislative priorities. Speakers included Grace Banu, director of the country's Trans Rights Now Collective; V. Sivadasan, a Marxist member of parliament from Kerala; and a panel of speakers from community libraries across the country. (This author also spoke at the event.) The gathering marked a turn towards organising for government support for libraries, a recognition that the kind and scale of transformation FLN members seek requires action from the state.

The demand for a free public library goes well beyond the rupee. 'Free for us is also the freedom to be in that space, to use it without fear, to have the support to learn how to use the space or read the books, to be a space where everyone moves with respect and dignity,' said Grover.

This means the library must be explicitly anti-caste and feminist, says Purnima Rao, a member of FLN's board. 'We must release the Indian public library from the chokehold of patriarchal and Brahminical systems, which have long gone unchallenged,' she said. In Khirki, those commitments are listed clearly in colourful signage which reminds members that all are welcome in the space, including women and those whose caste position has long excluded them from these institutions.

Such restrictions are rarely listed in the rules. For example, the Delhi Public Library states that it provides service 'irrespective of any distinction of sex, caste, creed, and religion'. For FLN activists, such statements are insufficient, given deepening inequality in Indian society more broadly. To join, charging fees effectively exclude the poor from libraries, embedding a class-based hierarchy into an ostensibly public institution. By contrast, FLN libraries must be explicitly anti-caste and gender-inclusive, and programmes must reflect this priority. 'One of my first jobs at the Community Library Project was managing the line at circulation,' Rao said. 'I was told not to allow anyone to cut the line, no adult could skip ahead of any child.' For Rao, it was among the first times she had experienced a line that nobody could cut, regardless of class or caste status. The community library is a space where everyone is equal.

As they advocate for a free public library system with politicians and policymakers, FLN organisers continue to build community libraries on the ground as examples of the world they want. In Dibrugarh, a city of just over 150,000 in the northeast corner of Assam, trans rights activist and storyteller Rituparna Neog established the Chandraprabha Saikiani Feminist Library & Resource Centre as a library and community space. The brightly lit space features walls festooned with rainbow flags and shelves of books for patrons of all ages in a mix of languages including Hindi, English and Assamese. Library leaders also support Project Kitape Katha Koi, a community library that serves children in nearby Chenijan, Jorhat, among the region's industrial tea plantations. 'Within a free community library, we can sit together, we can exercise democratic values, have discussion and conversation, sharing of information, knowledge,' Rituparna said. 'The free community library is a site of resistance.'

### Library movements

Grover sees free libraries in Assam and across India as part of a history of public library organising in the country. 'For the longest time, we have seen waves of library movements and individual and collective efforts to build a public library system in India,' says Grover. 'Each time it gains momentum the ideas are filtered down, diluted and eventually buried, perhaps barring in Kerala, till they are unearthed again with a fresh set of demands for public libraries for the people. No matter the number of blows to the movements, the demand keeps resurfacing.'

For now, FLN activists and organisers are leaning into the library as a crucial institution in broader movements for social and political change, especially urgent as the extreme right continues to consolidate state power in the country. 'Libraries are the people's tools to educate, organise and agitate,' says Rao. 'FLN recognises the critical role of the library in listening and responding to the people's struggles. The library must employ its resources, infrastructure and services to empower all.' ◆

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