

# Broken Promises

## Stalled Progress on an International Business and Human Rights Instrument



**Study Published by Maat**



## Contents

<b>Introduction</b> .....	<b>2</b>
<b>Methodology</b> .....	<b>4</b>
<b>Section I</b> .....	<b>5</b>
Developments Related to Establishment of an International Legally Binding Instrument on Transnational Corporations .....	5
<b>Section II</b> .....	<b>9</b>
Statistical and Thematic Analysis of Draft International Instrument.....	9
<b>Section III</b> .....	<b>12</b>
Different Visions of Countries Participating in Negotiations .....	12
<b>Section IV</b> .....	<b>16</b>
Crucial Roles of Civil Society in Reaching Legally Binding International Instrument	16
<b>Section V</b> .....	<b>20</b>
Participation of North African Countries in Negotiations to Establish Legally Binding International Instrument .....	20
<b>Conclusions &amp; Recommendations</b> .....	<b>24</b>

## Introduction

It is estimated that more than 60 of the world's 100 richest and most influential economic entities are corporations rather than states. However, there is currently no mechanism to regulate the work of these companies or assess the potential impact of their activities on human rights and various communities. Given the increasing activities of transnational corporations and the consequences of these activities on human rights, as well as the disruption of the Sustainable Development Goals, the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (hereinafter referred to as Working Group) was established by Human Rights Council resolution 26/9 in 2014. This initiative was led by several states that share a vision regarding the intersection of transnational corporations' activities and violations of rights and freedoms. **Working Group has been tasked with developing a legally binding international instrument to regulate the activities of transnational corporations and other business enterprises.** Since its establishment, Working Group has held nine sessions to advance this instrument, the most recent being the ninth session from October 23 to 27, 2023. The tenth session, originally scheduled for October 2024, has been postponed to December 16 to 20, 2024.<sup>1</sup> The potential instrument or treaty aims to protect human rights, mitigate violations by corporations, ensure victims' access to justice, and provide redress and compensation for harms suffered as a result of corporate activities. Additionally, it seeks to enhance international cooperation.

While transnational corporations can positively promote and advance human rights, their practices can also lead to significant harm. Therefore, adopting a legally binding instrument to regulate corporate activities would establish a necessary balance, providing greater justice for victims. A review of the nine sessions of Working Group reveals a consensus that the legal instrument should complement the Guiding Principles on Business and Human Rights adopted in 2011. These Guiding Principles encourage states to consider a "smart mix" of national and international measures, both mandatory and voluntary, to enhance business respect for human rights. The opportunity to advance this agenda arises before the 13th Business and Human Rights Forum, scheduled for November 25 to 27, 2024, which will focus on good practices for implementing the smart mix. Consequently, Maat calls on all stakeholders to advocate for the establishment of this legally binding instrument as part of a smart mix. High Commissioner for Human Rights has also acknowledged that the efforts of Working Group complement the Guiding Principles on Business and Human Rights, falling within the framework of the necessary measures to enhance corporate respect for human rights. The UN Guiding Principles have established a common understanding of the duties of governments and the responsibilities of

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<sup>1</sup> Note Verbale by the Chairpersonship of the OEIGWG confirming the dates for the 10th session, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session10/IGWG-TNCs-OBEs-Chair-NV.pdf>



companies through a three-pillar framework. The three pillars are: protection, which refers to the duty of states to safeguard their citizens from corporate abuses; respect, which denotes the responsibility of companies to uphold human rights through the principle of human rights due diligence; and remedy, which highlights the necessity for access to effective remedies for individuals whose rights have been violated, through both judicial and non-judicial grievance mechanisms.

Maat publishes this study on the sidelines of the 13th session of the United Nations Forum on Business and Human Rights, marking ten years since the establishment of Working Group on an International Legally Binding Instrument Regulating the Activities of Transnational Corporations. This publication comes ahead of the 10th session of the United Nations Open-ended Intergovernmental Working Group on Transnational Corporations and Business Enterprises, scheduled for 16 to 20 December 2024 in Geneva, where the latest updated draft of this legally binding treaty will be negotiated. This draft was published at the end of July 2023, and subsequent proposals will also be discussed. The study aims to clarify recent developments regarding the establishment of the international instrument, provide a statistical analysis of the draft to be negotiated, assess the differences between countries that are hindering progress toward adopting the instrument, and identify the role that civil society can play in advancing the potential treaty. Additionally, the final section of the study focuses on the participation of North African countries in the negotiations aimed at establishing this international instrument. However, the study will not address the technical comments on the draft or the proposed changes to the articles, as these will be covered in a separate evaluation study by Maat. **For the purposes of this study, North African countries are defined as Egypt, Morocco, Algeria, Tunisia, Libya, and Sudan. Finally, the aim of this study is to stimulate progress in the negotiations related to the establishment of the international instrument, especially in light of the existing differences among countries.**

## Methodology

The methodology of the study was based on reviewing the nine reports issued by the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises, as well as the results of informal consultations conducted by Working Group and the outcomes of regional consultations. To focus on the position of North African countries regarding the adoption of a legally binding instrument, the study examined their stance since the adoption of Human Rights Council Resolution No. 29/6 in 2014. Additionally, the study analyzed a range of documents addressing the challenges facing the establishment of a potential international instrument regulating the activities of transnational corporations and other business enterprises.



## Section I

# Developments Related to Establishment of an International Legally Binding Instrument on Transnational Corporations

Since the adoption of Human Rights Council Resolution 9/26 in 2014, which established an intergovernmental working group tasked with developing an international legally binding instrument regulating the activities of transnational corporations and other business enterprises, formal discussions and informal consultations have commenced to establish the potential instrument. Despite the agreement expressed by the majority of States on the importance of the resolution, this consensus has not been accompanied by the political will necessary to overcome differences and reach an agreement to advance the instrument in the near future.

From the first session of Working Group, which was held in July 2015, to the date of this study, nine sessions have taken place, the most recent in October 2023, with participation from approximately 75 States on average throughout the negotiations. Working Group has adopted three drafts of the potential instrument or treaty, the latest being the updated version released in July 2023, which incorporated textual proposals from States. This version was informed by comments and additions from States and the outcomes of regional consultations, providing a meaningful impetus to accelerate the pace of negotiations.

During the period from October 15 to 19, 2018, the fourth session of Working Group was held, **during which a preliminary draft instrument** regulating the activities of transnational corporations and business enterprises was discussed. Additionally, a preliminary draft of an optional protocol was reviewed, intended to accompany the main draft of the legally binding instrument. The **second draft** was prepared by the Permanent Mission of Ecuador to the United Nations in Geneva, on behalf of the Chair of Working Group. This draft served as the basis for negotiations during the sixth session, which took place from October 26 to 30, 2020.<sup>2</sup> At the seventh session, held from October 25 to 29, 2021, the third draft of the revised legally binding instrument was discussed as the foundation for negotiations. At the eighth session, **the third updated draft of the legally binding instrument**, along with textual proposals submitted by States during the seventh session, served as the basis for further negotiations. There were comments from States and other stakeholders regarding the informal contributions made by the Chair-Rapporteur on specific articles of the instrument regulating the activities of transnational corporations and other business enterprises. At the ninth session, held in October 2023, negotiations on the updated version of the international instrument commenced. However, these discussions were hindered by contradictory positions and divergent views among States.

In May 2024, the Chairperson-Rapporteur held consultations in an effort to advance the negotiation process and address some procedural issues. One key outcome of these

<sup>2</sup> A/HRC/55/59/Add.1, Available at the following link, <https://documents.un.org/doc/undoc/gen/g24/022/86/pdf/g2402286.pdf>

consultations was the decision to allocate additional resources annually by 2025 to facilitate regional intersessional consultations with the assistance of legal experts to further the negotiation process. The following table provides a chronology of Working Group sessions and the nature of discussions held from the first to the ninth session.

**Table I: Chronology of Working Group Sessions and Nature of Discussions**

Working Group Sessions	Date	Nature of Discussions
First Session	From 6 to 10 July 2015	<ul style="list-style-type: none"> <li>• Discussion of content, scope, nature, and form of a possible international instrument regulating activities of transnational corporations and other business enterprises.</li> </ul>
Second Session	From 24 to 28 October 2016	<ul style="list-style-type: none"> <li>• Discussion of obligations and responsibilities of transnational corporations and other business enterprises.</li> </ul>
Third Session	From 23 to 27 October 2017	<ul style="list-style-type: none"> <li>• Discussion of scope of application of the instrument, preventive measures, and jurisdiction.</li> <li>• Developing elements of a draft legally binding instrument prepared by Chair-Rapporteur of working group, taking into account discussions that took place during first and second sessions</li> </ul>
Fourth Session	From 15 to 19 October 2018.	<ul style="list-style-type: none"> <li>• Discussion of Articles 2.8</li> <li>• Articles 6.7 3</li> <li>• Articles 10. 11. 12</li> <li>• Articles 1, 14 and 15</li> <li>• Articles 3.4</li> <li>• Articles 5</li> <li>• Discussion of a preliminary draft of a legally binding instrument to regulate activities of transnational corporations and other business enterprises</li> </ul>



Working Group Sessions	Date	Nature of Discussions
		<ul style="list-style-type: none"> <li>• Discussion of a preliminary draft of an optional protocol that will be attached to preliminary draft of optional protocol.</li> <li>• Draft legally binding instrument.</li> </ul>
<b>Fifth Session</b>	From 14 to 18 October 2019	<ul style="list-style-type: none"> <li>• Discussing draft updated instrument</li> <li>• Articles 1 to 21</li> </ul>
<b>Sixth Session</b>	From 26 to 30 October 2020.	<ul style="list-style-type: none"> <li>• Discussing second draft of negotiations during sixth session</li> </ul>
<b>Seventh Session</b>	From 25 to 29 October 2021	<ul style="list-style-type: none"> <li>• Discussing draft of third updated draft, which was the basis for negotiations during seventh session</li> </ul>
<b>Eighth Session</b>	The period from 24 to 28 October 2022	<ul style="list-style-type: none"> <li>• Textual proposals for States in an updated draft of legally binding instrument</li> <li>• From preamble to Article 3, Articles 4, 5 and 14, in addition to Articles 15 to 24.</li> <li>• Inviting states to submit specific textual proposals on various provisions of third updated draft, in addition to responding to any proposed text by expressing support or not, or by proposing amendments.</li> </ul>
<b>Ninth Session</b>	From 23 to 27 October 2023	<ul style="list-style-type: none"> <li>• Negotiations on legally binding instrument in its updated version approved in July 2023</li> </ul>



## Section II

# Statistical and Thematic Analysis of Draft International Instrument

Updated version of draft legally binding international instrument, issued in July 2023, forms the basis for negotiations at the tenth session of Open-ended Working Group, scheduled for 16 to 20 December 2024. This draft, along with the textual proposals submitted by States during the ninth session,<sup>3</sup> consists of a preamble and 24 articles.<sup>4</sup>

**Articles 1 to 3:** Define key terms such as "victims" and "business activities," outlining the purpose and scope of the instrument. **Articles 4 to 5:** Address the rights of victims and the measures to protect them. **Article 6:** Focuses on prevention, detailing the preventive measures that States should adopt to prevent violations by transnational corporations within their territories. Paragraph 2 of Article 6 states that "States Parties shall adopt appropriate legislative, regulatory, and other measures to prevent business enterprises from engaging in human rights abuses."

On the other hand, **Articles 7 and 8:** Discuss remedies for victims of transnational corporations' business practices and the legal liability of individuals and entities involved in these activities.<sup>5</sup> **Article 9:** Concentrates on universal jurisdiction, which remains a controversial topic among negotiating countries. Initially titled "Jurisdiction to Issue Judicial Rulings," it was subsequently revised. **Articles 10 and 11:** Relate to the statute of limitations for violations involving transnational corporations. Article 10, which addresses this issue, has faced controversy; however, its inclusion in the updated draft aligns with the aspirations of several countries and civil society organizations. Article 11 outlines the applicable law when corporate victims seek judicial recourse,<sup>6</sup> offering various options to support victims' rights, including the possibility of applying the law of the country where the violation occurred or where the victim resides. **Articles 12 to 14:** Address mutual legal assistance and international judicial cooperation, ensuring consistency with international law. **Articles 15 to 24:** Focus on institutional and technical arrangements, covering topics such as the establishment of a special committee alongside the optional protocol, dispute settlement, amendments to the potential treaty, reservations, and the processes for entry into force and withdrawal from the treaty.

<sup>3</sup> A/HRC/55/59/Add.1, Available at the following link, <https://documents.un.org/doc/undoc/gen/g24/022/86/pdf/g2402286.pdf>

<sup>4</sup> Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, <https://tinyurl.com/39v85ttv>

<sup>5</sup> IBID, ARTICLE 8, <https://tinyurl.com/39v85ttv>

<sup>6</sup> IBID, ARTICLE 11, <https://tinyurl.com/39v85ttv>

**Table: Articles Contained in Draft Legally Binding International Instrument**

Definitions	Purpose	Scope	Victims Rights	Victim Protection	Prevention
Redress	Legal Liability	Jurisdiction	Prescription	Applicable Law	Mutual Legal Assistance
International Cooperation	Consistency With International Law	Institutional Arrangements	Implementation/Application	Protocol	Dispute Settlement
Signature, Ratification, Acceptance, Approval & Accession	Entry Into Force	Modifications	Reservations	Withdrawal	Deposit & Language



## Section III

# Different Visions of Countries Participating in Negotiations



Average number of countries participating in Working Group sessions was 76. Although the majority of countries welcomed Resolution No. 26/9 of 2014, which established Working Group, they have not yet agreed, after ten years of advocating for the development of an international instrument, on a unified wording for the potential treaty. The differences primarily lie between the group of Western countries, including the European Union and the United States, on one hand, and the Russian Federation and the African group of countries, on the other. Since the first session of Working Group, signs of divergence have emerged among the countries involved in drafting the binding instrument. After nine rounds of discussions, some differences were resolved; however, significant disagreements remain that hinder progress toward a legally binding instrument.<sup>7</sup> Maat assessed these differences by reviewing the documents of Working Group, which are outlined as follows:

### 1. Scope of Application of Treaty

One of the fundamental differences observed by Maat during the discussions and informal consultations relates to the scope of application of the treaty. A group of countries, including the United States and other Western nations, believes that the treaty's application should not be limited to transnational corporations but should also include local companies. This stance is not supported by the countries of the Global South or the African Group, as well as the Russian Federation, which argues that the treaty should apply solely to transnational corporations since local companies are governed by local laws. Consequently, the Russian Federation continues to oppose using the draft issued in July 2023 as the basis for negotiating a potential treaty regulating the activities of transnational corporations and protecting affected victims. Given the current trend favoring the Western group's opinion that the draft should encompass all companies, including small and medium-sized enterprises and public sector entities, disagreements over the scope of application may lead to delays in adopting the potential treaty as a whole.

### 2. Differences in Wording

Maat also noted that differences among states regarding "specific phrases" in the updated version hindered progress toward the draft to be negotiated at the tenth session. Some states objected to the phrase "contractual relationship" in the earlier version of paragraph 4 of Article 1 before it was ultimately removed. Some delegations argued that the term "contractual relationship" could be interpreted narrowly, potentially excluding important commercial relationships with human rights implications. Some states suggested using the term "business

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<sup>7</sup> BHR Treaty Process, <https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process>

relationship” as an alternative, as this aligns with the language in the Guiding Principles on Business and Human Rights.

Others proposed the phrase “economic relationship.” Ultimately, the term “commercial relationship” was adopted. However, some states continue to reject this term. According to paragraph 6 of Article 1 of the draft, “commercial relations” refers to any relationship between natural or legal persons, including governmental and non-governmental entities, engaged in commercial activities. This encompasses activities conducted through subsidiaries, affiliates, agents, suppliers, partnerships, or joint ventures. This definition differs from “commercial activities” in paragraph 4 of Article 1, which encompasses any economic or other activity, including but not limited to the manufacture, production, transportation, distribution, marketing, and retail sale of goods and services. This applies to natural or legal persons, including state-owned enterprises, financial institutions, investment funds, transnational corporations, and other commercial enterprises, as well as joint ventures and activities conducted electronically.

Amendments to these terms may be proposed in future negotiations. Additionally, some phrases have sparked controversy among countries; for instance, the phrase “obligations of transnational corporations” was replaced with “responsibilities of transnational corporations” at the request of the United States. Critics argue that the latter phrase is less stringent regarding the obligations imposed on companies. Civil society organizations had advocated for the retention of “obligations of companies,” but this was not achieved.

Furthermore, there were disagreements among countries regarding the need for environmental impact assessments. Some nations viewed these assessments as essential, with support from civil society organizations, while others called for their removal from the text. A third group of countries insisted that any assessments should also address the social and economic impacts of corporate activities. It is surprising that some European Union countries opposed conducting environmental impact assessments, especially considering that 847,000 EU citizens signed a petition urging EU leaders to adopt regulations requiring companies to respect human rights and environmental standards, and to advocate for a robust UN treaty to end the impunity of transnational corporations.

### 3. Monitoring and Oversight Mechanisms (Committee Established Under Instrument)

Part of the differences among countries stems from varying visions regarding the body responsible for monitoring and overseeing the implementation of the potential treaty's provisions. Some countries expressed concerns that establishing a contracting body would impose significant financial burdens. Maat believes that the main issue is to avoid repeating the

experiences of existing treaty bodies, particularly regarding weak compliance by countries with recommendations issued by these bodies and delays in submitting reports. Some experts have suggested an effective alternative: a national mechanism that countries ratifying the treaty would be obliged to establish, as stipulated in the legal text of the treaty.

#### 4. Debate Over Voluntary or Mandatory Nature of Instrument

There is a significant difference of opinion regarding the binding nature of the potential treaty. While some countries—particularly those in the Western European group and others such as the United States—prefer a treaty that does not impose excessive obligations on states, citing the large number of transnational corporations headquartered in their jurisdictions, countries in the African group, including North African nations, see no benefit in any potential treaty unless it is mandatory and enforceable.

## Section IV

# Crucial Roles of Civil Society in Reaching Legally Binding International Instrument

Civil society organizations have actively participated since the establishment of Working group, advocating for a legally binding international instrument. The updated draft of the potential treaty recognizes the importance of civil society's role, mentioning it in the preamble, as well as in paragraph 2(D) of Article 6 on prevention and preventive measures, and in paragraph 2 of Article 13 on international cooperation. However, this participation has often been scattered and disunited, leading to inconsistent visions that undermine the collective voice of civil society in reaching the potential treaty. The study suggests a set of critical factors and roles that should be prioritized to ensure the strength and effectiveness of this instrument, avoiding the limitations seen in other treaties.

### **1. Pushing Towards Setting a Reasonable Time Frame**

Maat asserts that it is unacceptable to wait another full decade of discussions to achieve a legally binding treaty on business and human rights. Therefore, civil society must advocate for a reasonable timeframe for completing negotiations, both in statements made during the tenth session and in discussions held on the sidelines. This effort should occur alongside a participatory process that includes all stakeholders, ensuring representation from civil society, employers, trade unions, national human rights institutions, and the private sector in the negotiation process.

### **2. Establishing an International Fund for Victims of Transnational Corporations**

Although paragraph 7 of Article 15 in the updated draft of the potential instrument provides for the establishment of a fund to offer legal and financial assistance to victims of transnational corporations' practices, some countries are advocating for the removal of this paragraph in the upcoming negotiations during the tenth session of Working Group. Furthermore, updated text does not specify how many years should elapse before the fund is established after the treaty enters into force. It is crucial to clarify this timeline in upcoming negotiations rather than using the placeholder "X" as referenced in the July 2023 draft.



### *International Fund for Victims*

15.7. States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims, taking into account the additional barriers faced by women, children, persons with disabilities, Indigenous peoples, migrants, refugees, internally displaced persons, and other vulnerable or marginalized persons or groups in seeking access to remedies. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument).

The Conference of States Parties shall define and establish the relevant provisions for the functioning of the Fund.

### *Text of paragraph seven of Article 15 draft potential instrument*

On the other hand, it is essential to clarify the broad outlines of the fund's operations, resources, and management. This will guide the team tasked with developing the provisions for the fund's functioning. In this regard, similar experiences, such as the United Nations Voluntary Fund for Victims of Torture, can serve as effective models. This fund specifically focuses on victims, directing resources to assist those affected by torture and their families. Maat believes it is crucial to prevent any attempts to remove this paragraph regarding the fund in the upcoming negotiations, driven by concerns that countries may seek compensation for potential damage to corporate activities.

### **3. Improving the Potential Monitoring Mechanism (Treaty Bodies)**

Maat advocates for establishing a treaty body as the most effective means to monitor compliance among countries that join the treaty. Additionally, Maat recommends incorporating several conditions to enhance the body's effectiveness:

- ✓ Selection of Experts process will occur in two stages: first by the Secretary-General of the United Nations, followed by an election among the selected experts. This process should ensure geographical balance and gender equality.
- ✓ A dedicated reporting system should be established for this body to prevent delays often experienced by states parties to other human rights treaties.
- ✓ Body should conduct annual regional consultations in a designated country within each regional group, with the host country chosen on a rotating basis. These consultations should include representatives from countries, companies, the private sector, civil society, and other stakeholders.

### **4. Translation**

Local communities are often significantly affected by the activities of transnational corporations and are the primary victims of these actions. However, they are typically excluded from the drafting process and may not be aware of the draft treaty or the progress of negotiations. The absence of translated documents further exacerbates this issue. Therefore, it is necessary to advocate for additional resources to facilitate accurate translations, as unauthorized translations may not accurately convey the legal terminology contained in the potential draft treaty.

## 5. Unifying Civil Society Efforts to Address Companies

Despite the updated draft of the potential instrument recognizing the role of civil society, much of civil society's efforts focus on states rather than on transnational corporations, which are directly addressed by the treaty provisions. Consequently, mobilization and advocacy efforts primarily target states to expedite negotiations and align their proposals with international standards. To address this gap, it is vital to foster dialogue with transnational corporations, encouraging them to adopt a more constructive stance towards the treaty negotiations. This can be achieved through side events during working group sessions and through oral statements made during these sessions.

## Section V

# Participation of North African Countries in Negotiations to Establish Legally Binding International Instrument

The participation of North African countries in the negotiations aimed at adopting a legally binding international instrument regulating activities of transnational corporations and other business enterprises within the framework of international human rights law has varied significantly. Most countries did not engage effectively in the negotiations, amendments, and textual proposals for the draft potential treaty. The table below illustrates the distribution of North African countries' participation in the negotiations.

**Table: Distribution of North African Countries' Participation in Working Group Sessions**

Sessions	Participating countries	Countries that did not participate
Third Session <sup>8</sup>	Egypt - Algeria - Morocco - Tunisia - Sudan	Libya
Fifth Session	Egypt - Algeria - Morocco	Libya - Sudan
Sixth Session	Egypt - Algeria - Morocco - Tunisia - Sudan	Libya
Seventh Session	Egypt - Algeria - Morocco - Tunisia - Libya	Sudan
Eighth Session	Egypt - Algeria	Morocco - Tunisia - Sudan - Libya
Ninth Session	Egypt - Algeria - Tunisia	Libya - Morocco - Sudan

### 1. Positive Contributions of North African Countries Towards Reaching a Binding Instrument

- Two North African countries, Morocco and Algeria, were among the 21 countries that supported draft resolution No. 9/26, which led to the establishment of the mandate for Working group responsible for developing the potential treaty. At that time, these two countries were members of the Human Rights Council.<sup>9</sup> Remaining North African countries later welcomed the resolution and expressed their commitment to Working group mandate.

<sup>8</sup> بدأت مشاركة الدول من الدورة الثالثة نظرا لأن الدورتين الأولى والثانية كانت عبارة عن حلقات نقاش لخبراء للنظر في نطاق وطبيعة وغرض الصك الدولي

<sup>9</sup> 26/9 Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, <https://tinyurl.com/e2arvmv9>

- Some North African countries, such as Egypt, emphasized the need to include farmers and environmental rights in the draft legally binding instrument, recognizing these groups as among the most vulnerable to violations by transnational corporations during their comments on the draft potential treaty.
- Several North African countries advocated for abandonment of voluntary international law tools, arguing that they are often ineffective and unenforceable.<sup>10</sup>
- Most North African countries expressed that the purpose of potential treaty should be to address existing gaps in international law regarding human rights violations committed by transnational corporations and to provide effective remedies for victims.
- Majority of North African countries support the call to regulate activities of transnational corporations to ensure a balance between the interests of these private entities and public interests, as well as the rights of their workers, thereby promoting basic rights and sustainable development.
- There was a call to reference International Labor Organization conventions and the 2030 Sustainable Development Agenda, along with all internationally agreed human rights declarations, in the preamble to the potential treaty.
- All North African countries recognize that business enterprises and transnational corporations have the potential to promote sustainable development if they focus on increasing productivity, fostering comprehensive economic growth, creating jobs that respect internationally recognized human rights, and upholding workers' rights alongside occupational health, safety standards, and environmental rights, in accordance with international human rights standards.

## 2. Weaknesses in the Participation of North African Countries in the Negotiations

- Maat notes several gaps that weaken the involvement of North African countries in the negotiations aimed at establishing a legally binding international instrument on transnational corporations.
- There has been weak participation from some North African countries, such as Libya, which only engaged in the seventh session of Working Group, and Sudan, which participated in only two sessions.
- Limited involvement of North African countries in the Friends of the Chair initiative, launched by the Chairman of Working Group to facilitate regional coordination and hold consultations between sessions aimed at advancing negotiations.

<sup>10</sup> Annex to the report on the sixth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (A/HRC/46/73), PAGE 7, <https://tinyurl.com/mrc8msd7>



- Diminished comments from some North African countries on the three drafts of the international legally binding instrument on transnational corporations, with countries such as Libya, Sudan, and Algeria providing only limited feedback on the potential draft treaty.

## Conclusions & Recommendations

It appears that significant challenges remain in reaching an international instrument and a potential treaty regulating the activities of transnational corporations and other business enterprises. This is particularly evident in light of the ongoing differences between countries and lack of political will be driven by national interests. Additionally, civil society proposals have often been inadequately addressed, which should not diminish its enthusiasm for accelerating negotiations. Accordingly, Maat for Peace, Development, and Human Rights recommends the following:

- We urge Working Group to prepare a position paper outlining the fundamental differences between States during the negotiations and to invite civil society and other stakeholders to submit written opinions to help resolve these differences.
- We urge transnational corporations to conduct periodic assessments of the impact of their activities on human rights and the Sustainable Development Goals, rather than relying on one-time evaluations.
- We encourage Working Group to facilitate negotiations prior to the tenth session, in line with the mandate of Resolution 26/9 issued by the United Nations Human Rights Council.
- We urge geographical groups to develop mechanisms that encourage companies to exercise human rights due diligence, identifying, preventing, mitigating, and addressing negative impacts on human rights.
- We urge all States to participate actively in the meetings of Working Group and in regional negotiations between sessions.
- We encourage North African States to consider leading regional consultations for the African Group to develop a unified vision regarding the current draft of the potential instrument.
- We recommend providing technical and financial support, if possible, to Friends of Chair Group to advance regional consultations and progress in the negotiations.
- We emphasize the need to draw on OECD Guidelines for Multinational Enterprises during the negotiations on the international legally binding instrument on transnational corporations at the tenth session to be held in December.