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Statement by UN experts on the 16th UN Conference on Trade and Development (UNCTAD)
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Geneva

States must prioritise human rights and planetary health in trade, investment and business regulation

As Geneva hosts the 16th UN Conference on Trade and Development (UNCTAD) from 20-23 October, we urge States to seize this important opportunity to underscore the need to reform international trade and investment law in line with international human rights law.

States' obligations to prevent human rights violations and significant environmental harms, including to the climate system, encompass their duty to effectively regulate and monitor businesses, and do so according to stringent due diligence.

Fundamental changes to international investment agreements (IIAs) and the investor-State dispute settlement mechanism have been repeatedly recommended by various experts in official reports (A/78/168, A/79/270, A/HRC/59/42, A/HRC/60/25, A/80/206, A/80/187), as this system prioritizes the protection of foreign investors, including fossil fuel companies, by enabling them to sue States for taking legitimate actions to protect human rights, address climate change (including by phasing out fossil fuels), preserve biodiversity and tackle toxic pollution. Companies have sued States against decisions to protect human rights, including the right to a healthy environment, and to comply with obligations under the Paris Agreement, such as phasing out from coal, gas, or oil, among other activities.

ISDS claims have been brought mostly by high-income countries companies, against low- and middle-income countries. These claims, which previously averaged around $25 million, now seek an average of more than $250 million, approaching a billion. In addition to worsening the public debt burden of developing countries, the ISDS mechanism also undermines the rule of law: as the process is highly confidential, excludes affected communities to seek access to remedy and has a chilling effect on States to comply with their international obligations.

As this week's UNCTAD-16 aims to shape the future towards transforming the economy for equitable, inclusive and sustainable development, we recognise that effectively addressing the drivers of the existential triple planetary crisis faced by humanity must be the center of economic transformations. Therefore, defossilizing our economies, while protecting biodiversity, reducing toxic contamination and protecting human rights, including the right to a healthy environment and to development, must be a priority in UNCTAD.

UNCTAD-16 is a key opportunity for States to advance fundamental changes to ensure that the trade and investment architecture truly makes as its objective sustainable development, the protection of human rights and effective responses to the triple planetary crises.

In parallel, the 11th session of the Open-Ended Intergovernmental Working Group (OEIGWG) to elaborate an international legally binding instrument on transnational corporations and other business enterprises offers an opportunity to create binding rules to regulate effectively all business enterprises responsible for human rights abuses and the triple planetary crisis,

including by tackling irreconcilable conflict of interest, corporate capture of public policy spaces and attacks against environmental human rights defenders.

We urge States to reinstate the human right to a clean, healthy and sustainable environment in the draft text of the treaty, and to ensure that investment treaties do not prioritize private interests of foreign investors over the public interest and the obligation of states to protect human rights and the environment, including the climate system.

ENDS

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