

Justice for People and Planet

Ending the age of corporate
capture, collusion and impunity



GREENPEACE



Executive Summary

This report demonstrates the need for urgent action to establish **justice for people and planet** and to **end corporate capture, collusion and impunity**. If governments adopt the **Principles for Corporate Accountability** presented in this report as binding rules, the result will be a greener, more peaceful and more just planet for us all.

The 10 Principles for Corporate Accountability are:

1. People and the environment, not corporations, must be at the heart of governance and public life.
2. Public participation should be inherent to all policy making.
3. States should abandon policies that undermine environmental and human rights.
4. Corporations should be subject to binding rules both where they are based and where they operate.
5. States should require due diligence reporting and cradle to grave responsibility for corporate products and services.
6. States should promote a race to the top by prohibiting corporations from carrying out activities abroad which are prohibited in their home state for reasons of risks to environmental or human rights.
7. States should create policies that provide transparency in all corporate and government activities that impact environmental and human rights, including in trade, tax, finance and investment regimes.

8. Corporations and those individuals who direct them should be liable for environmental and human rights violations committed domestically or abroad by companies under their control.

9. People affected by environmental and human rights violations should be guaranteed their right to effective access to remedy, including in company home states where necessary.

10. States must actually enforce the regulatory and policy frameworks they create.

These are not radical changes to our legal and political system. They are long overdue preconditions for people and the planet to thrive peacefully for generations to come. This report highlights the urgency of the systemic problems we are facing and shows how simple reforms could make a big difference on the global scale.

Through **20 case studies of corporate capture, collusion and impunity** this report shows how corporate power, in the absence of these principles, has been used to repeatedly abuse and violate human and environmental rights. The cases expose corporate wrongdoing relating to deforestation, water and air pollution, plastic pollution, waste dumping, chemical spills, nuclear disaster, violations of Indigenous rights, civic and legal repression of environmental and human rights defenders, tax avoidance, corruption, climate denial, and fraudulent manipulation of the public debate. The companies highlighted are ACS Group (Grupo Cobra), the Carbon Majors (47 companies)¹, DowDuPont, Energy Transfer Partners, Exxon, Gabriel Resources, Glencore, Grupo Bimbo, Halcyon Agri (Sudcam), ICI (Miteni), Keskinoglu, Monsanto, Nestlé, Novartis (Sandoz), Resolute Forest Products, Rosatom, Schörghuber Group (Ventisqueros), Total, Trafigura, and VW.

1. Alpha Natural Resources, Anadarko, Anglo American, Apache, Arch Coal, BG Group, BHP Billiton, BP, Canadian Natural Resources, Cemex, Chevron, Conoco Phillips, Consol Energy, Devon Energy, EnCana, ENI, ExxonMobil, Freeport McMoRan, Glencore, HeidelbergCement, Hess, Holcim, Husky Energy, Italcementi, Kiewit,

Lafarge, Lukoil, Luminant, Marathon, Murphy Oil, Murray Energy, North American Coal, Occidental, OMV Group, Peabody Energy, RAG, Repsol, Rio Tinto, Rosneft, RWE, Sasol, Shell, Suncor, Taiheiy Cement, Total, UK Coal, Westmoreland Coal, see also http://climateaccountability.org/carbon_majors.html

Governments must take action to protect the rights and interests of people and planet, by ending their collusion with, and protection of, corporate interests. Corporate environmental and human rights violations are not an inevitable aspect of our political economy. The **governance gaps** created by economic globalisation are not a natural phenomenon but rather a result of the political choices of policy makers. This means that effective state action could end corporate capture and close the governance gap. The cases presented in this report show that corporate impunity for environmental destruction and human rights violations is a result of the current economic and legal system. State failure to protect human rights and the environment is caused by corporate capture of decision makers and state institutions, leading to the consequent refusal of politicians to implement binding frameworks and hold corporations to account. The clear failure of voluntary codes and corporate self-regulation to safeguard human rights or the environment has led to renewed public demand for binding rules.

In Chapter 2 we show how states have, willingly and unwillingly, facilitated the development of **corporate power**. The reason for these misguided policy choices is not a lack of information but rather state capture by corporate interests. Corporate law, tax rules and trade and investment frameworks provide extensive rights for businesses, clashing with human rights frameworks and planetary boundaries. This international economic framework undermines the ability of states to regulate corporations in order to protect human rights and the environment, and hinders their efforts to raise sufficient domestic revenue to provide this protection. Closed policy making and public-private partnerships result in powerful governments abusing international fora to advance corporate agendas, with the result that policies aiming to tackle climate change and promote sustainable development are sabotaged.

States and their institutions have transformed their own role into an instrument to facilitate international investment and the agendas of large corporations. Transnational corporations (TNCs) and their home states are resisting binding codes, pursuing the counter-strategy of drafting and promoting non-binding standards.

Economic treaties, like trade, investment and tax treaties, provide companies with the kind of protection never granted to individuals or any other group in society. These treaties are generally binding and highly enforceable, in contrast to corporate accountability frameworks that are not enforceable in a court or by law. Environmental and human rights treaties also lack the kind of international enforcement mechanisms put in place for corporate investment protection.

The **international tax system**, with its tax havens, leads to large corporations amassing huge profits offshore, resulting in financial speculation, systemic financial risks, and economic inequality. States compensate for the tax losses related to this undeclared income with taxes on salaried workers and on consumption, leading to even more economic inequality.

The basic principles of **corporate law**, freedom of incorporation, limited liability, corporate personhood and the separate legal entity principle, and the lack of recognition of a corporate group in law, combine so that shareholders and chief executive officers (CEOs) enjoy practical immunity when it comes to legal responsibility for business activities harming the environment, workers or communities. They have also enabled massive tax avoidance and evasion, leading to annual public revenue losses of trillions of Euros worldwide. At the heart of corporations' failures to take into account and respect people and the planet is the erosion of the original principle that corporate activities should serve the public good.

Corporate **environmental and human rights violations** are not inevitable aspects of our political economy – the system is broken. Lack of regard for the public interest when deciding on the regulation of business activities has led to a concentration of wealth and power in transnational corporations; inducing a vicious cycle by which growing wealth increases corporations' hold over state's decision-making, which in turn leads to the further concentration of wealth.

In Chapter 3 we look at the **barriers to justice** faced by people seeking redress for the actions of corporations. Effective remedy and prosecutions of companies associated with environmental disasters, adverse health impacts, and human rights violations are rare. In charting

the struggle for justice, we show how four barriers: a lack of information, a lack of binding rules, a lack of enforcement, and the challenges of extraterritorial jurisdictions, combine to create a system of corporate impunity.

The first barrier, **lack of information**, arises because corporate law provides corporations with more rights than individuals, allowing them to obscure ownership structures and eschew liability. The vast inequality in resources between large corporations and the people who must live with the consequences of their business activities forms a major obstacle to obtaining the needed information to ensure that procedures protecting their interests are followed.

The second barrier is the **lack of binding rules**. These shortcomings in the national and international regulation of business conduct also mean that there is insufficient regard at boardroom level for human rights and environmental concerns when it comes to high-level corporate planning. This is a vicious circle leading to increasingly irresponsible behaviour, because there are no consequences for the directors or owners of companies. Large corporations can use the separate legal personalities of their subsidiaries and sub-contractors to avoid being held accountable in a court of law. Non-judicial mechanisms are generally only effective if the company is willing to change.

The third barrier is a **lack of enforcement** even in cases where clear rules exist. In addition to governments frequently lacking interest in pursuing corporate malfeasance, enforcement of existing environmental standards or human rights frameworks might be undermined by trade and investment agreements, and by mechanisms such as investor-state dispute settlement (ISDS). Large corporations and state entities can also collude to repress legitimate protest, through strategic lawsuits against public participation (SLAPP suits). It may also be difficult to get a judgement enforced; because of corporate limited liability, it is almost impossible for the plaintiff to go after the shareholders for damages.

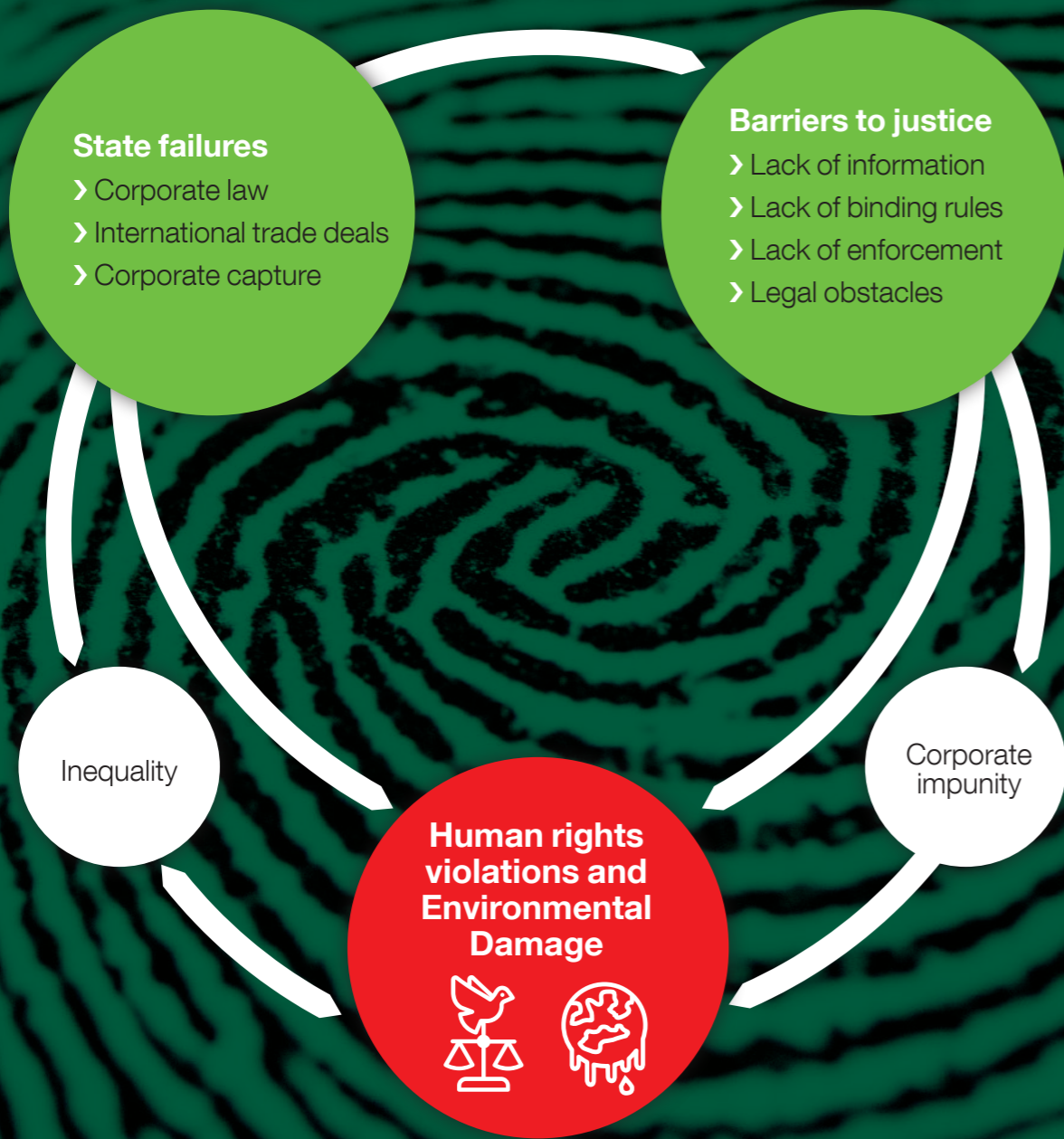
The fourth barrier we identify is the **ineffectiveness of extraterritorial jurisdiction**. In cases with a cross-border dimension, people seeking justice may face legal and jurisdictional barriers in both the country where the violation takes place (host country) and the country where the

company is headquartered (home country). Accessing justice in the country where a TNC is headquartered can be just as difficult as it is in a host state. The specification of home and host state responsibilities and extraterritorial regulation is essential to effectively prevent companies from abusing human rights in countries other than their state of incorporation. The development of laws with an extraterritorial dimension is therefore crucial to effectively prevent companies from abusing human rights in other countries.

In Chapter 4 we present the **Ten Corporate Accountability principles** (highlighted above) which governments must adopt to ensure justice for people and the planet. We suggest specific reforms that would give each principle life, and consider how the outcomes in our case studies would have been different had the principle been respected.

People are demanding, and will continue to demand, justice in the face of ongoing corporate impunity. The growing lack of public participation in politics, in particular in decisions about investment and corporate regulation, is at the heart of this problem. A new economic model that does not incentivise the externalisation of costs, and which provides for more participatory decision-making, is no longer an ideal, but a necessity. The common demand of all these struggles and movements is this: corporations need to be regulated in the public interest. States should reflect the rights and long-term interests of the public. Under international law, states already have the obligation to prevent, mitigate and ensure remedies for human rights abuses committed by corporations. The clear failure of voluntary codes and corporate self-regulation in safeguarding human rights or the environment has led to a renewed demand to put in place binding rules.

The change required is people-centred and global, and involves people reclaiming the economy for the public good, and corporations being regulated to serve broader public and long-term interests. Together we can create societies and economies that lead to a green and peaceful future, and provide prosperity within planetary boundaries.



Protest at Standing Rock Dakota Access Pipeline in the US A phalanx of National Guard and police advance toward a water protector holding an eagle feather at a camp near the Standing Rock Reservation in the direct path of the Dakota Access pipeline (DAPL) where 117 people were arrested.

20 cases of corporate capture, collusion and impunity

#	Case	Description	Headquarters	Place of violation	Relevant principles
1	ACS Group (Grupo Cobra)	Spanish infrastructure company Cobra (ACS Group) supported the construction of a hydraulic power plant, despite knowing it would impact the human rights of indigenous communities in Guatemala.	Spain	Guatemala	1, 2, 4, 5, 6, 8, 9, 10
2	Carbon Majors	The Philippine Commission on Human Rights is investigating 47 'Carbon Majors' for their contribution to climate change and resulting human rights violations.	multiple	Philippines, global	1, 2, 5, 8, 9
3	DowDuPont	Decades after the Bhopal disaster which killed 20 000, impacted half a million and contaminated the local water supply victims have been unable to secure adequate justice or remedies from chemical giant DowDuPont, a challenge made greater by a series of purchases and mergers.	USA	India	4, 5, 8, 9,10
4	Energy Transfer Partners	In developing the controversial North Dakota Access Pipeline fossil fuel company Energy Transfer Partners ignored the rights of indigenous communities and used violent security firms and a Strategic Lawsuit against Public Participation (SLAPP) to squash dissent.	USA	USA	2,3,5,8,9
5	Exxon	By the 1980's Exxon knew that climate change was real and caused by burning fossil fuels, but chose to mislead the public about this in order to protect its profits	USA	USA, global	1, 2, 5, 8, 9
6	Gabriel Resources	After Romania halted Canadian mining company Gabriel Resources from developing an open-pit gold and silver mine on environmental grounds, Gabriel Resources brought a \$4.4 billion claim, bypassing domestic courts.	Canada	Romania	1, 2, 3, 5, 6, 7
7	Glencore	Mining giant Glencore has made aggressive use of complex corporate structure and tax havens to deprive developing nations of tax revenues, while frequently being accused of human and environmental rights violations in the course of its business.	Switzerland	Global	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
8	Grupo Bimbo	Public pressure convinced Mexican multinational bakery products Grupo Bimbo to reduce pesticide use in its supply chain and adopt the higher quality standards in its home market that it faced in other countries.	Mexico	Mexico	1, 3, 5
9	Halcyon Agri (Sudcam)	Sudcam, a subsidiary of Singapore based Halcyon Agri is responsible for devastating forest clearance in Cameroon, resulting in dispossession of community lands and other impacts on human rights, including those of indigenous Baka people.	Singapore	Cameroon	1, 2, 3, 4, 5, 6, 7, 8, 9,10
10	ICIG (Miteni)	Italian chemical company Miteni, a subsidiary of International Chemical Investors Group (ICIG) has contaminated the soil and water in an area of around 200 km2, affecting more than 35,000 people, but the Italian authorities have so far been unable to provide any remedy.	Luxembourg	Italy	1, 2, 3, 5, 7, 8, 9, 10
11	Keskinoğlu	Chicken producer Keskinoğlu was able to use a SLAPP suit to deplete the resources of civil society when its production methods were criticised	Turkey	Turkey	1, 2, 3

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12	Monsanto	US-based agrochemical firm Monsanto's efforts to promote GMOs in Mexico, including intense lobby efforts, led to violations of the rights of indigenous peoples.	USA	Mexico	1, 2, 5, 6, 8, 9
13	Nestlé	Swiss food and beverage company Nestlé's packaging leads to huge amounts of plastic pollution for which the company takes no responsibility	Switzerland	Philippines	1, 2, 5, 6
14	Novartis (Sandoz)	By outsourcing pharmaceutical production to countries with weak anti-pollution legislation companies like Sandoz, a subsidiary of the Swiss Novartis, contribute to the emergence of bacterial 'superbugs', blamed for 700,000 deaths every year.	Switzerland	India	1, 2, 4, 5, 6, 8, 9
15	Resolute Forest Products	Resolute Forest Products has aggressively used Strategic Lawsuits Against Public Participation (SLAPPs) to deter critics.	Canada	Canada	3
16	Rosatom	Russian nuclear corporation Rosatom has been responsible for a series of nuclear accidents at its Mayak complex and victims have been unable to secure either justice or remedy in part due to the impunity of the state-owned company in Russian courts.	Russia	Russia	1, 2, 5, 7, 8, 9, 10
17	Schörghuber Group (Ventisqueros)	Chilean seafood company Ventisqueros, owned by the German Schörghuber Group, failed to conduct a proper due diligence process and became an accomplice in an environmental disaster in the south of Chile.	Germany (Chile)	Chile	4, 5, 6, 7, 8, 9, 10
18	Total	Oil and gas company Total proposed a major offshore drilling project without performing adequate due diligence with regard to possible environmental and human rights impacts.	France	Brasil	1, 2, 4, 5, 6
19	Trafigura	After oil trader Trafigura disposed of toxic waste in Côte d'Ivoire and caused a public health crisis, weaknesses in the legal system meant many victims were denied both justice and remedy.	Singapore	Cote d'Ivoire	4, 5, 6, 8, 9, 10
20	VW	VW's systematic cheating of emission tests led to billions in punishments in the USA, but almost no penalty in Europe due to differences in law enforcement and opportunities for remedy under the law.	Germany	Germany, global	1, 2, 5, 7, 8, 9, 10

Corporate accountability principles

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G20 Group Action Day in Duesseldorf
Greenpeace Group Action Day for G20
Summit along the Rhine promenade in
Duesseldorf. Greenpeace presents its G20
campaign slogan "Planet Earth First" and
offers the public the chance to create their
own banners and signs for civil protests
during the G20 summit in Hamburg
beginning with the "Protestwelle" ("Protest
Wave") on July 2nd. The aim is to use
people power to demand social justice,
effective climate protection, fair world trade
and stronger democracy worldwide of the
world leaders. Planet Earth First Stencil on
the ground.

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Justice for
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Greenpeace is an independent global campaigning organisation that acts to change attitudes and behaviour, to protect and conserve the environment and to promote peace.

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