Development
https://doi.org/10.1057/s41301-021-00319-8

THEMATIC SECTION

Towards Building Comprehensive Legal Frameworks for Corporate Accountability in Food Governance

Daniel Dorado[1] · Sofía Monsalve[2] · Ashka Naik[1,3] · Ana María Suárez[4]

© Society for International Development 2021

Abstract
Given the failures of the UN Food Systems Summit and Food and Agriculture Organization (FAO) to tackle the problems related to the corporate capture of food governance, this article calls for developing comprehensive legal frameworks for corporate accountability in food governance. In doing so, the authors identify key regulatory elements that need to be taken into account in food governance discussions. Their recommendations are borrowed from the guidance developed in the context of the negotiations for an International Legally Binding Instrument on TNCs and other Businesses with Respect to Human Rights, as well as in the WHO Framework Convention on Tobacco Control, the WHO Framework of Engagement with Non-State Actors, and the WHO Financial Regulations and Financial Rules.

Keywords Rights to food and health · Corporate capture · Due diligence

The UN is Ignoring a Root Cause of Hunger, Malnutrition, and Ecological Destruction

The activities of corporations affect diverse dimensions of the food systems. The impacts include pollution and destruction of ecosystems through deforestation, commercialization and use of agrotoxins, and the consequences of genetic engineering. They also encompass water and land availability and access; fisheries grabbing; destruction of small-scale food producers' livelihoods, experiential wisdom, and cultural and spiritual practices; as well as destruction of the social fabric of their communities. The dominant food system abuses agrifood workers and exploits their labour. It dispossesses traditional knowledge by means of intellectual property rights and extinguishes small-scale food producers' markets through abuse of its dominant position, oligopoly practices, and political interference. It nullifies and undermines consumers' enjoyment of the rights to food and health through standardization of non-diverse, non-local, and unhealthy diets, using misleading marketing of ultra-processed and unhealthy edible products. Furthermore, corporations undermine democracy and food sovereignty through their influence in democratic processes for agrifood policy setting and legislation, as well as by funding questionable industry-backed science to protect and place profits over the public interest and wellbeing, from the local to the international level. These practices contribute to increasing rates of diet-related diseases, hunger, and malnutrition in the world.

These harmful effects are the result of the increasing concentration of power by corporations. Instead of addressing this problematic development, the United Nations has decided to align itself with corporate interests. Agenda 2030 for Sustainable Development has been playing a catalytic role in establishing multi-stakeholder global partnerships through which corporations increasingly occupy public spaces for policymaking.[1] The UN Food Systems Summit (UNFSS) convened by the UN Secretary-General is the most recent example of this alignment: business associations and corporate-driven platforms such as the World Economic Forum (WEF), World Business Council for Sustainable

✉ Sofía Monsalve
monsalve@fian.org

1 Corporate Accountability, Quito, Ecuador

2 FIAN International, Heidelberg, Germany

3 Corporate Accountability, University of Massachusetts Boston, Boston, USA

4 FIAN International, Geneva, Switzerland

[1] 'Over the past 50 years, corporations, trade associations, and other entities representing corporate interests have invested increasing resources into influencing public policies to protect their bottom line, and have gained increasing legitimacy in policymaking spacs', https://www.corporateaccountability.org/wp-content/uploads/2019/10/CA_ICCexposed_onepager_09-FINAL.pdf.

Published online: 22 October 2021

Development (WCBSD), Alliance for a Green Revolution in Africa (AGRA); multi-stakeholder initiatives such as the Global Alliance for Improved Nutrition (GAIN) and Scaling-Up Nutrition (SUN); leading corporate philanthropies such as Rockefeller, Gates, EAT, and Stordalen Foundations; and corporate-friendly scientists and international NGOs such as the World Wildlife Fund (WWF) and CARE have dominated the Summit process.

Despite the strong call of social movements, other civil society organizations and the Special Rapporteur on the right to food (Fakhri 2021a, b) to address corporate power as a core topic of the Summit, UNFSS organizers failed to do so. Concerns regarding the lack of Conflicts of Interest (CoI) measures, accountability mechanisms, and transparency protocols were constantly overlooked and circumvented in the Summit discourse. Recommendations to introduce vital protective measures that could have ensured the Summit remained protected from a profit-driven agenda and was centered on people-driven vision were repeatedly shared by civil society organizations, academics, and food justice advocates serving in various formal and informal capacities from within and outside the Summit modalities. These were sidelined or deprioritized, which comes as no surprise considering the scope of entities that served as the key players and decision-makers throughout the Summit process.

Practices in the UNFSS were deeply problematic, but it is not the only international forum where corporations are exercising undue influence in the UN bodies responsible for food and agriculture.

FAO: A Case of Weakened Corporate Accountability in the UN System

In 2021, the UN Food and Agriculture Organization (FAO) adopted a New Strategy for Engagement with the Private Sector.[2] This regards the private sector as an entity that can help advance the Sustainable Development Goals (SDGs). In the strategy, FAO considers itself as a 'matchmaking' hub, putting Member States and relevant private sector entities together around shared priorities and investments. Additionally, FAO seeks to continue receiving financial and in-kind contributions from the private sector to support its own programmes and projects in areas of mutual interest.

This strategy changes FAO's aim—formerly to protect its integrity, impartiality, and mandate when working with the private sector—to focus more on attracting funding for FAO and facilitating business operations. Strategic objectives of this effort are to broker new power dynamics across countries and corporations in the global geopolitical landscape of finance and capital. The announced partnership between FAO and CropLife International,[3] a trade association representing the interests of corporations that produce and promote dangerous pesticides, is a case in point. It runs counter to FAO's own programmes and codes of conduct that are seeking to minimize the harms of chemical pesticide use worldwide, including the progressive ban of highly hazardous pesticides (HHPs) and to lead global efforts supporting innovative approaches to agricultural production such as agroecology. Moreover, such a partnership may transform FAO into a business broker for CropLife member companies, which explicitly target[4] developing and emerging countries in Africa, Latin America, and Asia as expanding markets for their products, taking advantage of weak controls on registration and commercialization of pesticides (Elver and Tuncak 2017).

Questions remain unanswered regarding how this strategy will avoid opening more and larger gates for further market domination, monopolization, and financialization of world's food and agriculture systems. Even though the FAO seems to recognize the risk of undue influence by the private sector on the discourse, guidance to avert it and to amend the imbalance of power is lacking. The strategy includes references to due diligence, but entirely lacks clear accountability mechanisms.

The public deserves to know which private sector funders are propelling the FAO and with whose support the FAO's agenda for private sector engagement is being formulated. The paradigm shift in the FAO's efforts to become a catalyst for partnerships between 'domestic and international, public and private',[5] has yet to yield results. But once results manifest, it would be beneficial to objectively and systematically audit who emerge as the true beneficiaries of this bolstered strategy, who has funded the FAO during this process, and how the FAO—in addition to the private sector actors engaged—has remained accountable and transparent to Member States and their peoples. However, this harmful engagement strategy must be systematically monitored, exposed, and challenged as well, before it is too late.

[2] http://www.fao.org/3/nd961en/nd961en.pdf.

[3] http://www.fao.org/news/story/en/item/1311286/icode/.

[4] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21306.

[5] http://www.fao.org/3/nd961en/nd961en.pdf p. 13.

UNFSS: A Missed Opportunity for Coherence with Current International Debates on Corporate Accountability

The avoidance by the UNFSS to engage with topics of corporate accountability and conflicts of interest disconnected it from the ongoing negotiations on an 'International Legally Binding Instrument on TNCs and other Businesses with Respect to Human Rights (TNC Treaty)'.

Since the 70s, civil society organizations and movements have been demanding the adoption of binding regulation for transnational companies and other businesses. Unfortunately, the main regulations adopted during the last decades have been voluntary and have not achieved the required effective protection for human rights of communities and individuals affected by business activities, especially in transnational spaces.

Following the intensive demands by a vast group of civil society, the 'Treaty Movement',[6] in 2014 the Human Rights Council adopted Resolution 26/9, creating an Open-ended Intergovernmental Working Group (IGWG) mandated to elaborate on an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. In October 2021, the IGWG will hold its 7th session, to negotiate the third revised draft of the treaty.

The TNC treaty process has created a political space in which advocacy groups working on diverse areas such as mining, food, environment, tax justice, health, digital technologies, and others have converged to express their demands to hold corporations legally accountable for human rights abuses in international law. The 'TNC Treaty Movement' aims to achieve corporate accountability as a holistic concept. The initial and main demands of the 'Treaty Movement' in 2014 included adoption of binding rules to hold corporations accountable in international law. This comprised regulation for companies' activities both domestically and beyond borders, remedy and preventative mechanisms for threatened and affected communities, and accountability mechanisms for States, including the States where home offices or controlling companies are located. At the heart of the demands were also mechanisms for enforcing civil, criminal, and administrative liability for companies perpetrating human rights abuses, monitoring and enforceability mechanism at international level, and the protection of human rights defenders.

During the negotiations it has been clear that the demand for corporate accountability must be based on fundamental human rights principles, such as, *inter alia*, legal accountability; the pro-persona and pro-victim principle; transparency and independence; the universality, interdependency, and interrelatedness of human rights; human rights primacy; and lastly, the interconnection between human beings and nature (pro-persona-natura principle). This includes also reaffirming the role of States, as human rights duty-bearers, which should assert their regulatory powers over businesses to prevent corporate harm to people and the environment. These regulatory powers include their obligation to cooperate internationally, to create an enabling environment for human rights realization, including through the imposition of obligations for companies in international law, which legal operators should be able to apply directly at the national level. Some members of the movement have been also asking for direct application of such obligations by an international court for transnational companies.

Defendants of the dominant economic model could argue that a number of standards are already in place to regulate businesses with respect to human rights, such as the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD), the Tripartite Declaration of the International Labour Organization (ILO), and the UN Guiding Principles on Business & Human Rights. Nonetheless, the conclusion of the TNC Treaty Movement is that all existing standards lack teeth and represent sets of voluntary 'recommendations,' 'expectations' or 'guidance' for 'responsible business conduct'. They do not provide for any form of legal accountability nor access to effective justice and remedies for affected individuals and communities in accordance with international human rights principles and standards.

For example, the UN Guiding Principles on Business & Human Rights (UNGPs) are a set of voluntary standards, which overemphasize business-level grievance mechanisms and represent a regression from human rights standards of UN treaty bodies on, for example, States' extraterritorial obligations. Reducing States' human rights obligations to mere voluntary standards is quite worrisome.

This watering down of standards of protection does not take place in a vacuum but is the consequence of increasing participation of business actors in multilateralism and the proliferation of 'multi-stakeholder' spaces, which consider businesses as stakeholders in human rights discussions. Having businesses 'at the table' or as 'stakeholders' contributes to the weakening of standards. The fundamental danger of exposing such policy processes to business interests is embedded in the divergent, and often conflicting, motives across stakeholders: people and communities fighting for their basic human rights and sometimes survival, versus businesses fueling their profits with impunity to please their shareholders.

[6] Treaty Alliance at treatymovement.org and Global Campaign for Peoples Sovereignty, to dismantle corporate power and stop impunity: https://www.stopcorporateimpunity.com/.

We have observed that during the last years, under the umbrella of the UNGPs and their ineffective national action plans, States are tending to reduce demands for corporate accountability to an issue of mere due diligence. We consider this reductionist approach to be a means to distract from the real issues of legal liability, how to regulate transnational corporations (including their parent and controlling companies as well as subsidiary entities), and extraterritorial jurisdiction—all pertaining to States' competence. This limited approach also marginalizes access to justice and remedy for affected people and communities.[7]

The focus on due diligence is undeniably linked to corporate capture and States' unwillingness to implement their obligations. Under our analysis, mandatory due diligence runs the risk of becoming merely procedural in which businesses can tick boxes to determine their liability. If framed as an obligation of the process rather than the result, due diligence will therefore enable corporations to escape liability and counter support for affected individuals and communities in their access to justice and remedies. As a form of self-monitoring or self-regulation, business due diligence, normally based on the vigilance plans developed by the same companies, lacks sufficient independence and impartiality to be a serious tool to identify and prevent human rights abuses.

Furthermore, company-level grievance mechanisms are perhaps one of the most dangerous and anti-human rights components of business due diligence plans. They allow businesses to be both judge and parties in a remedial mechanism for affected individuals and communities. Thus, they lack independence and depth, and their transparency is questionable. In some cases, such mechanisms have been used to hinder people's access to State-based mechanisms which should be impartial. Non-judicial remedy mechanisms can be useful in providing for rapid and effective remedies; however, these should be provided by the State as an independent authority and the main human rights duty-bearer, guided by the public interest (which isn't the case for businesses).

The TNC Treaty Movement keeps its focus on the need for a holistic legally binding instrument, which is based on a broad corporate accountability approach, puts people and nature over profit, institutes rules that prevent parties with vested economic interests from interfering in policymaking processes[8], and holds corporations abusing human rights liable, while pursuing prevention and remedy for the affected individual and communities.

The Urgent Need for Comprehensive Corporate Accountability Legal Frameworks in Global Food Governance

The COVID-19 pandemic has made the fractures, limitations, vulnerabilities, and dangers of the current globalized and commodified food systems alarmingly visible. We recognize that the current situation of hunger and malnutrition demands that we tackle existing power imbalances created by the hegemonic economic model through systemic changes. These include rebalancing trade and investment policies, curbing financialization, increasing tax justice, and strengthening communal and public institutions at all levels. In this context, a robust corporate accountability framework in food governance also constitutes a fundamental step towards making food systems more just, healthy, sustainable, and democratic.

The following are relevant and requisite regulatory elements that should be included in discussions about foods systems transformation:

- *Duty of care and prevention of harm*: Corporate accountability debates should not be focused on the concept of due diligence but driven by concepts like the duty of care or similar law institutions in other legal systems, as in extra-contractual civil responsibility. The concept of duty of care, as opposed to due diligence, imposes a legal obligation on corporations of reasonable care towards individuals and the environment, which they could foreseeably harm through their operations. The duty of care, in addition to imposing a legal requirement to prevent harm, therefore also triggers the civil liability of businesses when harm occurs. Duty of care is therefore particularly useful in order to assert the legal responsibilities that parent companies of transnational corporations hold over the activities of their subsidiaries, sub-contractors, and other entities throughout their supply chains and business relationships across the globe.
- *Regimes of legal liability*: Beyond the soft discourse of corporate social responsibility or the more recent concept of responsible corporate conduct, States individually and jointly (in particular 'home States') adopt comprehensive regimes of legal liability of corporations for harms to human rights and the environment, both within their territory and abroad. This means a regime of administrative, civil, and criminal liability, or its equivalent, for harm caused throughout the corporation's business operations, including abroad, providing and facilitating access to justice and remedies to foreign plaintiffs in its courts. Such business operations include investors and financial institutions connected to the alleged harm, as well as digital corporations connected to food systems.

[7] https://www.stopcorporateimpunity.org/global-campaign-expresses-concern-on-experts-working-group-on-tncs-and-hr-approach/

[8] https://www.corporateaccountability.org/wp-content/uploads/2019/10/CA_ICCexposed_onepager_09-FINAL.pdf

- *International cooperation between States*: As for similar transnational issues, such as money laundering, child trafficking or climate change, the regulation and liability of transnational corporations require international cooperation between States and therefore an international treaty. Taking actions through international cooperation is a human rights obligation of States under several human rights treaties and the UN Charter, and States should therefore actively engage in discussion towards an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.
- *Rules to prevent corporate capture of governance spaces*: Companies with vested interests in the area of agriculture and food shall be excluded from policy and law negotiations on food governance. Furthermore, clear rules on conflicts of interests, lobbying, and revolving doors should be adopted for individuals and institutions participating in governance processes, including those active in scientific research. Such rules should preserve the integrity, impartiality, and mandate of the specific institutions in which policies and laws are formulated and adopted, putting those values over funding interests.
- *Cooperation and assistance*: In the absence of an international treaty and in the current context of the development of national laws on corporate due diligence, duty of care or corporate accountability, 'home States' and competent international institutions should envisage in their regulations the provision of cooperation and assistance to 'host States' in prevention, monitoring, accountability, prosecution, and reparation of human rights abuses in food systems. Such assistance and cooperation of 'home States' should not be understood as an infringement on the sovereignty of 'host States', but rather as part of the obligation for international cooperation and assistance for the universal realization of human rights envisioned by the UN Charter.
- *States and competent international institutions' actions to prevent abuses*: In addition to imposing a duty of care on corporations within their territory and jurisdiction, States can also themselves take action within different policy areas in order to prevent corporate human rights abuses both at home and abroad. State's trade, investment, energy, development cooperation, and foreign affairs policies, as well as policies in International Financial Institutions, should not incentivize corporate human rights abuses nor cause other States to lower their levels of human rights protection. In the same vein, competent international institutions should support States in the implementation of such actions and should abstain from inducing States to support or give incentives to corporate behaviours causing human rights harm.

Towards Developing Corporate Accountability Legal Frameworks and Standards on Conflicts of Interest (CoI) in Food-related International Bodies

Given the potential expansion of undue corporate influence in the UN Committee on World Food Security (CFS), FAO, the International Fund for Agricultural Development (IFAD), and World Food Programme (WFP) in the aftermath of UNFSS, it is urgent to put on the agenda of these bodies serious discussions about adopting robust standards on conflicts of interest. In such an effort, the food-related UN bodies should take into consideration rich guidance provided through several frameworks and decisions emerging from decades of deliberation and public participation across the WHO—including the WHO Framework Convention on Tobacco Control (WHO FCTC), the WHO Framework of Engagement with Non-State Actors (WHO FENSA), and the WHO Financial Regulations and Financial Rules. These cases tackle the exact scope of the issue here—how to engage with businesses, corporations, industry groups, and other market actors at large to ensure that actions to advance the wellbeing of the people and the planet are not undermined by profit-making objectives of the industry. In fact, the former Special Rapporteur on the right to health, Dainius Puras (2014–2020), highlighted how transnational food and beverages companies, which account for one third of food sales, are increasingly implicated in the global obesity and non-communicable disease (NCD) epidemics and therefore need stronger regulation, as was the case for tobacco corporations.[9]

Multiple strategies have been implemented in several international mechanisms thus far to ensure that 1) conflicts are disclosed and curtailed, 2) industry remains accountable to the people, and 3) the industry is held liable for the harm caused to the people and the communities with reparation obligations. Taking a closer look at the lessons learned from the WHO FCTC and relevant dimensions of the WHO FENSA rules is vital to develop a CoI and transparency infrastructure to establish necessary protections to secure the world's food systems from corporate capture.

WHO Framework Convention on Tobacco Control (WHO FCTC) and its Potential Contributions Towards Building Corporate Accountability Legal Frameworks

There is an irrefutable and inherent conflict between the tobacco industry's interests and public health policy, akin to the conflicts existing between large junk food, agribusiness,

[9] https://www.babymilkaction.org/archives/1272

chemical, and digital corporations commodifying aspects of food systems that must be protected as matters of fundamental human rights. Parties need to protect to the greatest extent possible the formulation and implementation of policies related to food systems, similar to tobacco industry control policies, from such industries' interference.

What is WHO FCTC and Why is it Relevant?

WHO FCTC is an effort to protect tobacco control policies from industry interference.[10] The treaty provides critical measures to firewall industry's profit-making interests from influencing policymaking for the health and wellbeing of public and to hold industry liable for harms caused.[11]

The necessity to adhere to a legal corporate accountability framework that could build from the WHO FCTC precedent is indisputable given the track record of food industry's interference in democratic spaces including regional, national, and international (Granheim et al. 2017); the impact and liability caused by industry abuses on people's lives[12]; and the long history related to conflicts of interest that continue to emerge in policy discourses.[13] Such mechanisms can require CoI disclosures and govern the interactions of food and agriculture corporations and actors with governmental bodies, as well as explore the possibility to take legislative actions or to guarantee that States' existing laws ensure instruments for legal liability and essential reparations are accessible and effective.

WHO FCTC articles on CoI and liability offer a reasonable and practical path forward to secure food and agriculture related policymaking from corporate capture:

– WHO FCTC Article 5.3 – 'In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law'.[14]
– WHO FCTC Article 19 – 'For the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate…'[15]

What WHO FCTC Could Mean for Food Systems Governance

It is clear that articles 5.3 and 19 of the WHO FCTC were built on foundational accountability principles, which *mutatis mutandis* could guide some of the necessary provisions that FAO, CFS, and all UN bodies could adopt in order to advance real solutions centered on people's wellbeing against the profits and proliferation of industry interests. Given the potential conflicts of interest as seen most recently in the UNFSS, the governments and all UN bodies must adopt measures in line with Article 5.3 and 19 of the WHO FCTC to require all interactions of food and agriculture industry interests with governmental and UN bodies are disclosed and governed thoroughly, and to adopt liability measures curtailing the power of the industry via a legal system of punitive measures.

The following suggests how instrumental guidance from the WHO FCTC process might operate in the context of food and agriculture systems and governance:

- *Guidelines to protect public policies from corporate interference*: CFS, FAO, IFAD, and WFP can develop guidance on how to set and implement policies related to food systems and their governance without corporate interference, building on the guidelines for implementation of Article 5.3 of the WHO FCTC on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.[16] They can apply to persons, bodies or entities that contribute to the formulation, implementation, administration or enforcement of those policies.[17] The measures recommended in these guidelines could aim at protection from interference by the food and agriculture industries, but also by platforms, front groups, and individuals that work to further the interests of the food and agriculture industry.[18]
- *Maximizing transparency of delegations*[19]: The Conference of Parties (COP) to WHO FCTC decided to require Parties, when designating their representatives to the sessions of the COP, its subsidiary bodies or any other bodies established pursuant to the COP, to indicate that they have observed Article 5.3 of the WHO FCTC and have been mindful of the Article 5.3 Guidelines not to nominate delegates from the tobacco industry (including state-owned tobacco industries). Such transparency disclosures must be implemented to begin protecting mul-

[10] https://fctc.who.int/publications/i/item/9241591013

[11] Preamble https://fctc.who.int/publications/i/item/9241591013, p. 2.

[12] https://advocacyincubator.org/wp-content/uploads/2020/11/GHAI-Facing-Two-Pandemics-Report-November-2020.pdf

[13] https://www.corporateaccountability.org/media/report-group-funded-by-coke-big-food-looms-large-in-u-s-dietary-guidelines/

[14] https://fctc.who.int/publications/i/item/9241591013, p. 7 Art. 5.3.

[15] https://fctc.who.int/publications/i/item/9241591013, p. 17 Art. 19.

[16] https://www.who.int/fctc/guidelines/adopted/article_5_3/en/

[17] https://www.who.int/fctc/guidelines/article_5_3.pdf?ua=1

[18] https://www.who.int/fctc/guidelines/article_5_3.pdf?ua=1

[19] https://www.corporateaccountability.org/cop9/

tilateral policy meetings of the treaty mechanisms and UN bodies at large from food and agriculture industries and entities diligently working to further their corporate-friendly policies.[20]

  - In addition, the intergovernmental and nongovernmental organizations are also required to fill in a Declaration of Interest form, as are members of the media and the public when submitting their accreditation to the meetings. Adoption of such declaration requirements can allow the public to continuously expose, monitor, and challenge influence of the corporate sector on media and public opinion building, sometimes hiding behind the guise of industry-backed NGOs, during the food systems and governance related discourses, such as the UNFSS.[21]

- *Issues relating to liability:* Article 19 of the WHO FCTC, as determined by each Party within its jurisdiction, are important levers of a comprehensive corporate accountability system. Implementation of strong regulatory framework for liability is imperative to keep the profit motive out of the discourse and build trust in the process.[22] Article 19 of the WHO FCTC provides a starting point for articulating a mechanism to hold food and agriculture industry actors liable for the harms caused by their business enterprises that undermine human rights.

In sum, the WHO FCTC offers a substantial breadth of tools that could be adapted and then adopted to develop meaningful measures to firewall agrifood industry's interests from policymaking.

WHO FENSA Rules and WHO Financial Regulations: Potential Contributions Towards Building Corporate Accountability Legal Frameworks

During the 69th session of the World Health Assembly (2016), the WHO Framework of Engagement with Non-State Actors (WHO FENSA) was adopted.[23] The framework endeavours to strengthen WHO engagement with non-State actors, such as NGOs, private sector entities, philanthropic foundations, and academic institutions, while laying provisions that can protect the WHO's work from potential risks of such engagement, such as conflicts of interest, reputational risks and undue influence.[24]

Although a valuable and essential policy framework, the WHO FENSA rules could have been stronger and more justice-centered. Instead of limiting its scope to the 'due diligence' lexicon, they can be developed to align with a 'duty of care' approach as proposed in this article. In spite of these weaknesses, WHO FENSA begs for attention as a mechanism that already exists in the UN space as a vital starting point to guide establishment of a corporate accountability framework for food and agriculture industry actors. The intention of bringing WHO FENSA to the debate is also to investigate its impact as a complementary policy to the strong precedent of the WHO FCTC. Together these models have the potential to facilitate design and discourse about a corporate accountability instrument to safeguard policy outcomes from profiteers.

Following are three specific strategic contributions which WHO FENSA can make to this debate vis-à-vis accountability:

- *Due diligence to duty of care:* WHO FENSA addresses that there should be adequate due diligence in the engagement with business and also to protect the WHO (this could apply to FAO, CFS, and all UN bodies). Here the 'due diligence' paradigm needs to be expanded to the 'duty of care' system of accountability, although the due diligence language can provide a preliminary guidance to develop improved 'duty of care' obligations for the food and agriculture industry actors.
- *Definition of private sector:*
- The WHO FENSA rules address the definition of private sector, which is critical to adopt as a part of the considerations when outlining any policy guidance for food and agriculture industry accountability. Private sector is defined as 'entities [that] are commercial enterprises, that is to say businesses that are intended to make a profit for their owners. The term also refers to entities that represent, or are governed or controlled by, private sector entities. This group includes (but is not limited to) business associations representing commercial enterprises, entities not "at arm's length" from their commercial sponsors, and partially or fully State-owned commercial enterprises acting like private sector entities'.[25] This definition can serve as the benchmark to prevent co-optation of policy spaces by trade associations and other organized interests that may not be identified as corporations, and were prevalent in the UNFSS.[26]

[20] https://fctc.who.int/who-fctc/governance/declaration-of-interest

[21] https://fctc.who.int/who-fctc/governance/declaration-of-interest

[22] https://undocs.org/en/A/HRC/46/33, p.10.

[23] https://apps.who.int/gb/ebwha/pdf_files/wha69/a69_r10-en.pdf

[24] https://www.who.int/about/partnerships/non-state-actors

[25] https://apps.who.int/gb/ebwha/pdf_files/wha69/a69_r10-en.pdf, p. 7.

[26] 'Over the past 50 years, corporations, trade associations, and other entities representing corporate interests have invested increasing resources into influencing public policies to protect their bottom line, and have gained increasing legitimacy in policymaking spaces'. https://www.corporateaccountability.org/wp-content/uploads/2019/10/CA_ICCexposed_onepager_09-FINAL.pdf

- *Financial rules and regulations:* Finally, in regard to budget considerations and implications (taking into account that these should be read in tandem with the WHO FCTC precedent), it is important to be attentive to the Financial Regulations of the WHO. According to the WHO FENSA Rules Guide for Staff on Engagement with Non-State Actors, 'Procurement of goods and services' and 'Financing from non-State actors' must follow the WHO procurement policy and Financial Regulations of the WHO, instead of WHO FENSA rules.[27] These recommendations are noteworthy to ensure conflicts are prevented via strategic, complementary, and in-depth regulations, in this case specifically related to financial conflicts.[28] The FAO engagement strategy critiqued previously can unequivocally benefit from articulating FAO's conflicts vis-à-vis financial dealings and funding sources following the WHO FENSA precedent.

As elucidated above, taking a closer look at the lessons learned from the WHO FCTC and following up on pertinent dimensions of the WHO FENSA rules could be constructive in developing a CoI, transparency, and liability infrastructure to establish necessary protections to secure the world's food systems from corporate capture.

Final Remarks

To summarize our insights when developing corporate accountability legal frameworks and policy processes within the FAO, CFS, and all UN bodies:

- *Precedents are available and accessible:* The WHO FCTC offers a considerable range of policy tools to prevent industry's profit-making interests from influencing policymaking for health and wellbeing of the public. WHO FENSA rules and Financial Regulations of the WHO, considered in tandem with the WHO FCTC precedent, also offer guidance related to business engagement around the discussion of food and agricultural policies in multilateral discourse.
- *Protections need to be put in place*: It is clear that these precedents were structured on strong accountability principles, which *mutatis mutandis* could guide some of the necessary provisions for FAO, CFS, and all UN bodies. Adoption of such protections is indispensable to advance real strategies and solutions that center and protect food sovereignty, human rights, traditional wisdom, and the rich cultural bedrock of people and communities across the world.
- *People's movements need to power policy processes*: It is essential to establish iterative and reflexive methodologies to develop outreach tools and create systems in a way that continual feedback loops are generated to refine future evolution of tools and systems, centering the demands and voices of the people on the frontlines of food governance and systems. Guidance from the grassroots, and not commands from corporate roundtables, should lead policy outcomes.
- *The role of civil society in corporate accountability needs clarity*: We recommend that civil society's role and participation in corporate accountability procedures are clearly outlined going forward, especially in the context of engagement with the private sector and the governments. Not involving civil society robustly in this discourse endangers the evolution of processes that impact us all but are not discernible or accessible to the public. This will ensure that conflicts are prevented, abated, and exposed. If tackled strategically, the role of the civil society can offer valuable depth of intent, oversight, and insight to advancing corporate accountability across the scale and scope related to food systems and governance multilateralism.
- *The priorities and positionality must be evaluated with regards to the perspectives of communities in the frontlines:* The answers to complex food systems and governance concerns should emerge from the communities who steward and safeguard our food systems, not private interests working for their shareholders. People and communities, not CEOs or business leadership, should hold the decision-making positions in any food systems-related multilateral forum. An evaluation of existing spaces within the FAO, CFS, and all UN bodies from this lens is needed to assess inherent power differentials and to set norms of engagement.

Overall, it is crucial that industries and their interests are committed to and regulated by stringent standards and guidelines, rather than engaged in shaping the policies and protections. Equally important is that any policy work that focuses on food systems and governance remain attentive to the integrity, impetus, and outcome of the engagement process, ensuring that people and the planet are the principal drivers leading the discourse.

Strong, strategic, and sustainable corporate accountability mechanism can be one such tactical structure reinforcing processes that serve people and not the profit motive.

[27] https://www.who.int/about/collaborations/non-state-actors/FENSA_guide-for-staff.pdf, p. 35.

[28] https://www.who.int/gb/bd/PDF/bd48/basic-documents-48th-edition-en.pdf#page=109, p. 103.

References

Elver, Hilal, and Baskut Tuncak. 2017. Report of the special Rapporteur on the right to food on the adverse impacts of pesticides on human rights, A/HRC/34/48, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/017/85/PDF/G1701785.pdf?OpenElement

Fakhri, Michael. 2021a, Interim report of the Special Rapporteur on the right to food, A/76/237, https://undocs.org/A/76/237.

Fakhri, Michael. 2021b. Report of the Special Rapporteur on the right to food, A/HRC/46/33, https://undocs.org/en/A/HRC/46/33

Granheim, Sabrina Ionata, Katrin Engelhardt, Patti Rundall, Stella Bialous, Alessandro Iellamo, and Barrie Margetts. 2017. Interference in public health policy: Examples of how the baby food industry uses tobacco industry tactics. *World Nutrition* 8 (2): 288–310.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.