



STATEMENT OF THE GLOBAL CAMPAIGN ON THE THIRD REVISED DRAFT OF THE BINDING TREATY ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS

7th of September 2021

Re: Release of the "third revised draft" during the negotiation by the Open-ended Intergovernmental Working Group on the elaboration of an international legally binding instrument to regulate the activities of transnational corporations (TNCs) and other business enterprises with regard to human rights

The Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and Stop Impunity (Global Campaign) notes the release of the third revised draft of the binding treaty, published on August 17, 2021. It is the result of the negotiation process started in 2014 with the adoption by the Human Rights Council of Resolution 26/9. This new draft emerges after the discussions held during the 6th negotiation session of October 2020 and the subsequent Matrix process of February 2021.

We are deeply concerned about the continuing hollowing out of key content, i.e., content that social organisations and affected communities view as critical. We hereby share our first impressions on the new draft and raise some procedural questions concerning the negotiation of successive "drafts".

Although we note some positive changes in the third revised draft, these are mostly cosmetic, rhetorical and ineffectual. These superficial changes seek to increase the legitimacy of the proposed text, but, in reality, fail to solve the structural problems repeatedly highlighted by social movements and affected communities.

A change of direction in both content and procedure will thus be necessary to meet the objectives set out in Resolution 26/9 and to respond to communities subjected to human rights violations. It is unacceptable that the innumerable proposals for improving the draft presented throughout the negotiation sessions by representatives of the affected communities, social movements, as well as many experts and States to be omitted. The third revised draft is basically similar to the previous draft, despite the high number of concrete proposals that were made to improve it. This gives us the feeling of a lost year.

Moreover, the methodology used to revise the draft transparently considering the contributions of States and civil society organizations is a must. We appreciate the synthesis and mediation efforts of the Ecuadorian Chair Rapporteur. Nonetheless the negotiation has reached a point of maturity that requires a Member driven, open and transparent negotiation process facilitated by the Chair Rapporteur. This must ensure that the voices of civil society and affected communities are heard and taken into consideration by including the diverse text proposals in brackets during the session of negotiation. The objective of the session should be to achieve a new draft proposal of the IGWG and not just of the Chair. In short, to be true actors in the process, civil society must have both voice and influence.

In terms of content, we note once again that, following the approach presented in the previous drafts released by the Chair Rapporteur after the robust Elements Paper in 2017, and despite some positive elements, the new draft continues to present an ineffective and "toothless" instrument. We also note the use of vague, indeterminate and even non-legal concepts that may compromise the future interpretation and application of key articles.

As it stands, the draft instrument fails to meet the objectives established by Resolution 26/9, namely to regulate the activities of transnational corporations within the framework of international human rights law (in order to prevent human rights violations by TNCs and stop corporate impunity) and to ensure effective and comprehensive access to justice for affected peoples, individuals and communities. Furthermore, the current draft would not close the existing legal loopholes that allow and will allow TNCs to violate human rights with impunity and to escape liability for their actions. Without more innovative and ambitious provisions, the treaty risks becoming a new futile instrument aligned with voluntary frameworks that have already demonstrated their ineffectiveness.

Furthermore, the new text unacceptably continues a logic centered exclusively on States' obligations, and fails to establish the direct obligations for transnational corporations, necessary to hold them directly accountable for the human rights violations they are responsible for. We are also concerned about the continued extension of the scope of the text to all business enterprises, including small and medium-sized enterprises. This dilutes the *raison d'être* of the binding treaty and the purpose set out in Resolution 26/9 (to address the particular obstacles to holding TNCs accountable), which clearly refers to transnational corporations and other business enterprises "with transnational character".

Another element is the scope of prevention and legal liability of TNCs which focuses on weak provisions linked to due diligence, an inherently limiting concept. This risks a situation where TNCs escape liability as soon as they comply with due diligence processes.

We call attention to the lack of an unequivocal reaffirmation of the primacy of international human rights law over corporate, trade and investment law, the absence of a strong international enforcement and monitoring mechanisms (including an international tribunal) that would guarantee the effective implementation of the treaty, as well as the several remaining gaps in terms of inclusion and definition of global value chains, the piercing of the corporate veil, and addressing the bottom line of transnational corporate impunity.

At this stage, it seems clear that the Chair of the Working Group is steering the process towards the elaboration of a treaty emptied of its core content and focus on transnational corporations, with only generic provisions that rely on the capacity and political will of the States for their implementation and in line with corporate self-regulation. This confronts us with a text overly accommodating to the requests and interests of the corporate sector and their political allies.

This being said, the Global Campaign will continue its strong engagement in the negotiations with the unyielding intention to come up with a truly binding treaty worthy of its name and capable of becoming a bulwark against the power of transnational entities that lay claim to being the engines of our economies while they violate human rights and destroy our natural environment with impunity. In line with these commitments, the Global Campaign will, if necessary, oppose the adoption of a treaty whose content has been watered down and risks becoming a "normative trap" that closes the door on truly effective reforms in the coming years.

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