COMMENTS ON THE REVISED DRAFT LEGALLY BINDING INSTRUMENT ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS OF 16 JULY 2019

I. INTRODUCTION

The revised draft of a legally binding instrument on Transnational Corporations (TNCs) and human rights, which is presented to the 5th session of the Intergovernmental Working Group (Working Group) on this issue is an important sign of continuity in the negotiation process. As we have pointed out in previous years, the formulation of successive drafts implies a willingness to continue promoting the development of the Binding Treaty which is undeniably positive. However, we are deeply concerned about some elements in the revised draft.

The latest draft-text carries weaknesses which reflect the non-inclusion of multiple comments and proposals that were strongly emphasized in the fourth and previous sessions, the purpose of which was the strengthening of the text. More importantly, most of proposals which were made during the fourth session by the Global Campaign to reclaim peoples′ sovereignty, dismantle corporate power and end impunity (Global Campaign) which have been proposed by affected communities and social movements, are not taken into account, although the Chairman of the Working Group committed to do so. Most of the changes in fact effectively remove positive elements that the Global Campaign had welcomed in the previous draft. It should be noted that social movements and communities which have been affected by Transnational Corporations' (TNCs) activities have dedicating considerable efforts and resources to participate in the negotiations over past five years.

The revised draft does not commit to respond towards fundamental challenges of globalization, and as such cannot serve as the basis for an international instrument that seeks to serve as the global framework for regulating the activities of TNCs. In order to tackle these challenges, we call upon the Working Group to respect the mandate set out in Resolution 26/9 and to take into account the elements presented by the Global Campaign in this document.

The following are our main comments and proposals to be discussed at the 5th session of the Working Group.

With these comments and proposals, the Global Campaign is engaging, as it has been since the beginning, in a constructive and positive way in the process of negotiation. This document is based directly on the demands of our organizations and movements, as well as drawn from the Treaty proposal of the Global Campaign.

II. GENERAL COMMENTS

Primacy of human rights

The primacy of international human rights law over any other international legal instruments, and in particular over trade and investment agreements, is the established principle which has been an integral part of the goal of the Working Group. However, the very principle is removed from this revised draft. This principle must be explicitly reaffirmed in a separate article, in the preamble and reinforced in various articles of the text, including articles 5 (Prevention), 9 (Applicable law) and 12 (Compliance with international law).

Indeed, in the current framework of neoliberal policies, human rights law is treated as subordinate to commercial and investment law. It is therefore essential to reaffirm the primacy of international

human rights law over trade and investment agreements and legislation, and act upon it through necessary implementation.

Scope

The change in the scope of the revised draft, which includes "all business", is an important political signal sent to the European Union and some other countries. It also responds to a desire by private sector lobbies who have called for the broadening of the scope in order not to see a change in the status quo or to fill existing gaps in international law. This change of scope weakens the focus on TNCs throughout the treaty.

The spirit and purpose of Resolution 26/9 is very clear: the main target of the future binding treaty is TNCs and other companies with transnational activities. Indeed, the complex legal and economic structure of TNCs, as well as their economic power and high lobbying capacity allow them to easily slip through the cracks of domestic law.

In addition, other parts of the draft read with the new scope, may allow natural and legal persons who control TNC value chains to escape justice and legal prosecution. For example, the new term "contractual relationship" could be interpreted restrictively and it will therefore be difficult to prove these relationships and lift the corporate veil. Responsibility and accountability mechanisms should focus on the parent company and subcontractors. Nothing in the future Treaty should allow TNCs to blame the links in the value chains they control for human rights violations, especially when they make the key decisions and benefit the most.

For all these reasons, we call for full respect towards the scope which is established by Resolution 26/9, which focuses on TNCs and other business enterprises of a transnational character.

Supply chains

We are concerned about the setback and retreat in the revised draft on the matter of joint and several liability of TNCs with their supply chains.

Indeed, with the term "contractual relations", there is a high risk that other forms of non-contractual control are excluded and that TNCs exercising such non-contractual control may escape their joint and several liability.

In addition, the revised draft fails to mention the key concept of "lifting the corporate veil". The corporate veil is the central element in corporate impunity, and therefore the lifting must be specified in the future Treaty, in order to declare the existence of the chain of command in corporate decision-making and responsibilities. The corporate veil prevents all entities in the TNC supply chain from having a common legal existence, so that each is considered an autonomous legal entity. This fact prevents the recognition of the parent company's legal liability for violations caused by the entities in its chain, despite the existing links between them. In this way, this "autonomy" of the legal personality constitutes a veil between the parent company and the other entities which comprise the corporation. TNCs must disclose the existence and relationships of all entities in their chains, business relationships and corporate groups, and the Treaty must establish mechanisms to declare legal liability between the parent company and its supply chain.

TNCs obligations

The revised draft does not take into account the direct responsibility of TNCs to respect human rights and prevent their violations, as discussed and demanded by many actors at previous sessions of the Working Group. Thus, its content reveals, from the outset, the clear desire to limit the purpose of the future treaty by assigning all responsibilities exclusively to States.

In our view, it is essential that the project include human rights obligations for TNCs, independent from state obligations. This direct application must be vertical for States parties (obligation to take measures against third parties to protect the human rights of their populations) and horizontal for TNCs (not to violate human rights in their activities). TNCs must respect the principles and standards set out in United Nations treaties. Removing TNCs from any obligation other than a duty of diligence and vigilance in a Treaty that is supposed to tackle corporate impunity is, in our view, a fundamental error and an unacceptable setback that runs against the spirit of the mandate of the Working Group since its creation.

Systematic reference to Domestic Law
Reference to domestic law is made throughout the new draft Treaty, which constitutes a risk to the effective implementation of the future Treaty and the rights of the affected communities and individuals. Indeed, this notion, with a few exceptions, could dilute the obligations arising from the future treaty and reduce its scope.

III. COMMENTS ON THE ARTICLES

Preamble
The new preamble maintains the general guidelines set out in the first draft, with similar gaps.

In the preamble to the revised draft, emphasis is placed on the primary obligation to respect, protect, fulfil and promote human rights which lies exclusively with States. As has been stressed throughout the discussions in the Working Group, the obligation to respect human rights cannot be limited to only to States. It is necessary to specify in this project the specific responsibilities of and obligations of TNCs.

Placing the responsibility to protect human rights solely on States means maintaining the current status quo, which is unable to act against the impunity that surrounds the actions of transnational corporations. It is well known that the ability of States to enforce human rights standards towardsTNCs, in which often the TNCs are much more powerful, has always been compromised by multiple means. It is precisely this notorious ability of TNCs to escape human rights norms is the main reason why international law must provide an effective response towards this - namely a mandatory norm that obligates them to respect human rights. In addition, it is important to note that international trade law recognizes specific rights of TNCs, particularly in multilateral and bilateral investment treaties. While TNCs may be de facto subjects on which a branch of international law recognizes rights, it is not only necessary but indispensable to recognize their obligations.

Apart from this fundamental principle to be included in the preamble, other changes have to be made:

- It is necessary to specify in paragraph 13 of the preamble that it is the duty of States to ensure that human rights are respected by companies under their jurisdiction, by establishing binding and effective standards. However, both in the preamble and in various articles of the new draft treaty, the terms used to refer to TNCs varies. These terms should be used with reference to the definition in article 1.3.
- It is also necessary to include the affirmation of the primacy of human rights obligations over trade and investment agreements. **Proposal:** *The States Parties recognise the primacy of International Human Rights Law over all other legal instruments, especially those related to trade and investment.*
- It is necessary to include a reference on the issue of corporate capture, inspired from the WHO Framework Convention on Tobacco Control (article 5.3): *In setting and implementing their public policies with respect to the regulation of TNCs, State Parties shall act to protect*

these policies from commercial and other vested interests, and from undue interference by TNCs.

- In the recognition of vulnerable groups (§15) as the group which shall be especially protected, peasants should also be recognized.
- In the list of the international instruments mentioned in the preamble, the following should be added: *Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; the Convention relating to the Status of Refugees; the Convention against Corruption, the Conventions and Recommendations of the International Labour Organization, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on Slavery, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the four Geneva Conventions and their Optional Protocols, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the Rome Statute of the International Criminal Court and other relevant international instruments approved at the international level in the human rights framework.*

Article 1. Definitions

In order to make article 1 more operational, we propose various additions and modifications.

<u>With regard to the definition of victims and the definition of human rights violation or abuse (Art. 1.1 and 1.2)</u>

- We propose to use the term "affected communities and individuals" instead of or in parallel with the term "victims".
- Delete the reference to national legislation in article 1.1 which limits the scope of the purpose of the international human rights norm.
- It should be clarified in the definition of "victims" that TNCs responsible for violations of their rights may be private, public or mixed.

<u>With regard to the definition of "business activities" (Art. 1.3)</u>

With regard to the definition of "business activities", the mention of "profit" has been deleted. This current definition is in line with resolution 26/9 which defines the mandate of the working group. However, this definition needs to be respected and maintained in a harmonized manner throughout the draft. In addition, in the definition of "business activities" we also propose to add acts of commission and omission, and to make explicit that TNCs can be private, public or mixed.

Proposal

We propose the following rewording of this definition: "*Business activities mean any economic* ***or other activity*** *of transnational corporations and other business enterprises* ***with transnational character, which can be private, public or mixed****, including, but not limited to, productive or commercial activities, undertaken by a natural or legal person, including activities undertaken by electronic means* ***and including both acts of commission or omission****."*

With regard to the definition of "contractual relationship" (Art. 1.4)
In the definition of "contractual relationship", the draft treaty includes a wide range of economic agents, which could indicate a willingness to broaden the responsible actors and possibly cover their responsibility in their supply chains. But there is a high risk that other forms of non-contractual control are excluded and that TNCs that exercise non-contractual control may escape liability. As a concept that can be interpreted restrictively from a legal point of view, it will place an excessive burden on the communities or individuals concerned to prove the existence of this "contractual relationship", thus creating an insurmountable obstacle to effective access to justice.

It is necessary to find a more precise and broader definition, such as "business relations" or "supply chain"1. To be relevant, this definition must be linked to other mechanisms which extend legal liability (not just due diligence) throughout the given relational chain. Therefore, the following points must be included in the future Treaty:

- the relationship between companies in the value chain (in article 1)
- the more detailed inclusion of the right to information, including on and towards all companies in the supply chain (in article 4)
- the joint and several liability2 of all companies belonging to the economic group or supply chain of the concerned TNC (in article 6)
- the restoration of the prohibition of the forum non-conveniens, the inclusion of the forum necessitatis and universal jurisdiction (in article 7).

With regard to the activities of international financial institutions (IFIs)3
International financial institutions have an undeniable impact on the enjoyment of human rights. The Global Campaign reiterates the need for the future treaty to refer specifically to TNCs and to include key actors such as the IFIs.

Article 2. Statement of purpose
The reading of this article would suggest that the object of the future treaty would be mainly oriented towards access to justice for victims (which by the way will not be guaranteed with the current draft), leaving it to the original background objective to achieve "regulation of the activities of transnational corporations and other business enterprises in international human rights law" as provided for in resolution 26/9. Such regulation must necessarily involve the establishment of concrete human rights direct responsibility of and obligations of TNCs, accompanied by necessary implementation mechanisms.

In the same vein, it should be noted that section 2.1.c indicates as one of the objectives "To promote and strengthen international cooperation to prevent human rights violations and abuses in the context of commercial activities, and to ensure effective access to justice and judicial remedies for victims of such violations and abuses." The current wording of this objective demonstrates a desire to focus the scope of the future treaty on domestic law. On the contrary, the objective of promoting

1 The supply chain consists of companies outside the TNC that contribute to the operations of the TNC – from the provision of materials, services and funds to the delivery of products for the end user. The supply chain also includes contractors, subcontractors or suppliers with whom the parent company or the companies it controls carry on established business relations. The TNC may exercise influence over a supply chain company depending on the circumstances.

2 Joint and several liability is the joint responsibility between TNCs, all its subsidiaries and their supply chain, including the parent company and private and public investors, including the International Economic and Financial Institutions (as defined below) and banks participating by investing in the production processes, for all of their activities.

3 The IFIs include Inter-governmental organisations, the United Nations and its specialised agencies (International Monetary Fund, World Bank), the World Trade Organization (WTO), development, trade and investment banks and other international financial institutions.

international cooperation to give effect to States' obligations and fill gaps in this regard must be made under international human rights law.

Beyond the objectives set out in this article, it is important to stress that they do not correlate with the mechanisms incorporated in the following articles. The following analysis shows that the necessary mechanisms to "prevent violations or abuses" or to ensure "effective access to justice and judicial remedies" for victims do not exist in the international domain and are also often absent at the national level.

Article 3. Scope

Article 3.1 sets out the subjective scope of the future treaty as follows: "*This (Legally Binding Instrument) shall apply, except as stated otherwise, to all business activities, including particularly but not limited to those of a transnational character"*. It is important to recall that in the text of Resolution 26/9, for the purpose of delimiting the scope, a footnote has been added stating that "the term 'other enterprises' refers to all enterprises whose operational activities are transnational in nature and does not apply to local enterprises registered in accordance with applicable national legislation".

By adding "*including particularly but not limited to those of a transnational character"*, article 3 deviates from the mandate , and also contradicts the definition of article 1.3 of this draft.

For this article, we propose the following changes:

- Reformulation of 3.1: "*This (Legally Binding Instrument) shall apply to all business activities, **as defined in art.1.3***".
- In Articles 5.1, 5.2, 5.5, 6.1, 6.4, 6.6, 6.9, 7.1.c and 11.2.c, there is repeated reference to the fact that business activities are not limited to activities of a transnational nature. These references in the above-mentioned articles should be deleted, in order to comply with the definition in Article 1.3.
- The article states that the rights concerned include all international human rights norms, without giving redundant wording. The Global Campaign believes it is important that this section includes the main international human rights treaties and, in particular, economic, social, cultural, civil, political and labour rights; the right to development, self-determination of peoples and a healthy environment; and all the collective rights of indigenous peoples and peasant communities.

Article 4: Rights of victims

Although article 4 contains important elements to ensure justice for affected communities and individuals, it has gaps. We therefore propose the following changes.

- With regard to the right of victims to information (Article 4.6), it should be borne in mind that the expression "*Victims shall be guaranteed access to information relevant to the pursuit of remedies*" is very vague. It should include, for example, access to information on public and private enterprises (legal persons) that form an economic group and/or are linked in the value chain, etc. Indeed, this information will demonstrate the existence of links between a given TNC and its supply chain, so that national courts and the future international implementation mechanism can be operational. In this sense, the right to information would complement the reversal of the burden of proof in order to counterbalance the problems caused by the opaque functioning of TNCs (article 4.16).

- Despite the provision on human rights defenders and the recognition of their role in the draft treaty, it is important to specify in this article special guarantees concerning them and to recognize their status as vulnerable persons, using the language of the Escazú Treaty[4].
- With regard to non-judicial mechanisms (Article 4.8), a safeguard clause should be included to ensure that their use does not compromise the access of rights holders to judicial mechanisms.
- It is also necessary to restablish the possibility of filing complaints without the consent of the victim or a group of victims, as provided for in article 5 of the previous draft, must be restored. Indeed, in some circumstances, it is not always possible to obtain the consent of affected communities and individuals. This should not be an obstacle to access to justice.
- Finally, the references to national legislation in paragraphs 11, 12.b, 14 and 16 limit the scope of article 4. They should therefore be deleted.

Article 5. Prevention

Article 5 follows the line of the previous draft, establishing obligations for States through a list of objectives to be achieved, and another open list of concrete measures.

The first new feature is the replacement of the reference to subsidiaries, subcontractors, etc. by the term "contractual relations" as defined in Article 1. Thus, the subjective scope of the measures seems to be broadened while the deletion of the term "indirect control" constitutes a restriction.

Secondly, the reference to the sanction for non-compliance with the measures is deleted. If there is no sanction, how can we ensure that these measures are respected? In addition, the provision that evaluations must be carried out ex ante and ex post is deleted, establishing only the obligation to integrate the conclusions of the relevant internal evaluations and processes. In other words, there is no obligation to make public the results of monitoring, identification and evaluation mechanisms. It is important, for example, to include provisions from French law on the duty of care that goes beyond due diligence, as the former includes a legal obligation to effectively implement this duty and a mechanism for liability and sanctions.

In terms of consultations (art. 5.3.b), there is an obligation to conduct meaningful consultations, which is not sufficient to guarantee respect for the right to participate in the decision-making of the populations concerned.

Article 5.5 also refers to the mechanisms of undue influence of TNCs on public policies. Although this paragraph is welcome, its scope is limited by the reference to national legislation. In addition, this subject should be included in article 14 "Implementation" which covers the whole treaty.

It should be noted that the preventive measures listed in article 5 do not contain the preventive standards that the State must adopt in administrative law to prevent human rights violations by TNCs, in particular, in the context of their relations such as public contracts, public-private partnerships, provision of services or activities.

In view of the above, we propose the following changes:

- Replace "constructive consultations" with "mandatory consultations".

4 "Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights,..." (Article 9.2 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted the 4th March 2018).

- With regard to the last sentence of § 3.b of article 5 on consultations of concerned groups, we propose the following amendment: "*Consultations with indigenous peoples, **peasants and other concerned populations**, will be undertaken in accordance with the internationally agreed standards of free, prior and informed consultations, as applicable"*. The respect of the consultations means the right of the populations concerned to oppose projects carried out by TNCs on their territory.
- Creation of accountability mechanism and sanctions related to the duty of prevention. In this sense, it is necessary to restore the clause contained in the previous draft treaty: "*Failure to comply with due diligence duties under this article shall result in commensurate liability and compensation in accordance with the articles of this convention".*
- Delete the references to national legislation in paragraphs 4 and 5 which limit the scope of article 5.
- Provide for preventive standards to be adopted by the State in administrative law.
- Include in this article precautionary measures to prevent irreparable damage.

Article 6. Legal liability
In general, it is essential that this article 6 **includes more specific clauses on administrative, civil and criminal liability**.

The inclusion of a clause in this article, **establishing the responsibility and obligations of TNCs and their joint and several liability with regard to their human rights supply chain**.

This article focuses on certain crimes, which do not include **violations of economic, social and cultural rights by TNCs' activities**. We believe that the future Treaty should provide for broad protection of human rights, in all their dimensions, without distinction. This principle should also be mentioned in the preamble.

We propose that the establishment of liability for all violations, not just the most serious ones, and that a well-defined criminal regime broad enough to include ESCR be established.

It is also necessary **to link legal liability to the duty of prevention and to establish liability** for non-compliance. In this sense, administrative review mechanisms and administrative sanctions should be developed within the framework of contractual administrative law or the administrative responsibility of the State in the event of failure to exercise due diligence.

It should be noted, once again, that there are no criteria regarding the type of sanctions that States should impose on TNCs. The future Treaty should contain certain **criteria for modulating sanctions according to the type of crimes or offences committed**. States, in international setting, must therefore include the sanctions that will be imposed on TNCs in the event of non-compliance with established standards.

Finally, the references to national legislation in **paragraphs 7, 8 and 9 limit the scope of article 6. They shall therefore be deleted**.

Article 7 Adjudicative jurisdiction
As formulated, article 7 provides an important and necessary basis for prosecuting TNCs in different jurisdictions. It thus opens up the possibility of bringing cases against TNCs in countries where they have substantial interests, which can be used to compensate affected communities or individuals.

However, this article does not define the responsibility of TNCs with their supply chain. Article 7.1 should include an explicit reference to **supply chains**, in which it will possible to link responsibility for the activities carried out by different entities.

The prohibition of the *forum non-conveniens* must be included whenever the link is established between prosecuted TNCs and the violations committed. At the same time, **the inclusion of the *forum necessitatis*** is necessary whenever the link is established between the prosecuted TNCs and the violations committed, especially in cases where there is no access to justice in any of the States where the companies concerned are domiciled.

A clause should also be included which states that **the only competent courts to deal with commercial disputes that have implications on human rights, will be the competent national courts**, and not arbitration structures, such as investor-State dispute settlement mechanisms, which are vested in the interests of TNCs. **Proposal:** *States Parties shall reject the inclusion of arbitration clauses that give international arbitration bodies jurisdiction over state-investor dispute resolution processes (ISDS).*

Universal jurisdiction shall be incorporated for crimes against humanity and violations of jus cogens.

Article 8. Statute of limitations
Article 8.2 specifies that "shall allow a reasonable period of time". This notion of reasonable time remains far too vague to guarantee adequate protection for victims. It is necessary to return to the formulation specified in the draft specification, namely "a sufficient period of time", which is more protective.

In addition, the reference to national legislation in article 8.1 limits the scope of this article. It must therefore be deleted.

Article 9. Applicable law
Article 9 does not allow for a clear resolution of conflicts between different national legislations. In addition, the reference to compliance with domestic law in **paragraph 9.2 should be deleted, and an explicit reference to value chains should also be made**.

We also propose the following amendment to article 9.3: "*The (Legally Binding Instrument) does not prejudge a greater recognition and protection of any rights of victims that may be provided under applicable domestic law"*. In fact, national laws that are more protective or beneficial to affected communities and individuals shall prevail.

Finally, the reference to national legislation in article 9.2 limits the scope of this article. It must therefore be deleted.

Article 10. Mutual legal assistance and international cooperation
Article 10 requires more precise wording for greater clarity, in particular with regard to the parties.

Article 10.10.c is problematic when it conditions or imposes recognition of foreign judgment on respecting sovereignty, security and public order or other essential interests of the Party in which its recognition is sought: "*where the judgement is likely to prejudice the sovereignty, security, public order or other essential interests of the Party"*. This wording maintains a very vague margin of objection by the State concerned and goes against the supremacy of human rights and the fight against TNCs impunity.

It is necessary to add that in the judicial field, international cooperation must be highlighted, ranging from the exchange of information, assistance in investigations and proceedings, to enforcement of sentences, insofar as the decisions of other courts are recognized, including the possibility of the extradition of sentenced persons.

The references to national legislation in paragraphs 3.l and 4 reduce the scope of this article. They must be deleted.

Article 12. Consistency with International Law
The main change to this article is the removal of the primacy of international human rights law over trade and investment treaties. The primacy, also deleted from the preamble, shall be restored to the current wording of Article 12 and the preamble.

Article 13. Institutional Arrangements
The Committee
The mandate of the proposed Committee, as an implementation mechanism at the international level, falls short of the existing UN treaty bodies. To make it effective, article 13 should include the possibility of complaints against TNCs and make the Committee's recommendations binding. In short, victims do not have strong mechanisms to access truth, justice, reparation and non-repetition.

In addition, the Committee should guide States in their strategies for regulating TNC activities on preventing human rights violations.

To finance the work of the Committee and support victims' participation, we propose to create a fund that would be financed by a tax imposed on TNCs.

The Global Campaign believes that without the establishment of an independent international treaty implementation mechanism, whose decisions should be followed, it will not be possible to end TNC impunity and to ensure access to justice for affected communities and individuals. This mechanism may be set up in parallel and complementary to the Committee proposed in this article. In its Treaty proposal, the Global Campaign proposes an:

- **International Monitoring Centre for Transnational Corporations**, which evaluates, investigates and inspects the activities and practices of TNCs (jointly managed by States, social movements, affected communities and other civil society organizations).
- **International Court of Transnational Corporations**, to ensure the effectiveness of the obligations under this Treaty. The Court has jurisdiction to receive, investigate and adjudicate complaints against TNCs for human rights violations mentioned in this Convention. The Court protects the interests of communities and individuals affected by TNC activities by ensuring that TNCs and their leaders receive full reparations and sanctions. The Court's decisions and sanctions are directly applicable and legally binding.

This proposal of the Global Campaign should be thoroughly studied.

Article 14. Implementation
We believe it is important that the issue of corporate capture is addressed in article 14 rather than in article 5.

In order to ensure a firm and effective clause on this issue, the Global Campaign proposes the following wording: *The State Parties shall safeguard States' national and international policy space on human rights from undue interference by TNCs and refuse to give them the means to influence relevant policies on human rights in their bilateral, regional, multilateral or other types of trade and investment agreements.*