

CALL TO THE EUROPEAN UNION AND ITS INDIVIDUAL MEMBER STATES

4TH CONSULTATION ORGANISED BY ECUADOR ON 11 JULY 2018, PRIOR TO THE OCTOBER 2018 NEGOTIATIONS TO DRAW UP AN INTERNATIONAL LEGALLY BINDING INSTRUMENT (TREATY) ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS

On 26 June 2014, the United Nations Human Rights Council adopted Resolution 26/9, which established an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, in order to draw up ‘*an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*’.

This resolution is of crucial importance in making up for a major flaw in the international system. Indeed, when enterprises with a business activity that has a transnational character are implicated in crimes and human rights violations, they can generally avoid prosecution because of the complexity of their legal structure and the absence of effective legal mechanisms. It is thus urgent to ensure that victims have access to justice. To do so, States must hold these companies responsible for their acts and for their inaction in preventing and repairing human rights violations and environmental damage throughout their value chain.

Yet, since the creation of this intergovernmental working group, it is clear that the European Union and its individual Member States have failed to support this historic negotiation process, despite their declarations in favour of human rights.

For example, the Member States of the European Union voted against the establishment of this intergovernmental working group in 2014. They boycotted some of the working sessions and consultations. And they made numerous statements calling into question the mandate of this working group and the legitimacy of its Ecuadorian Chair.

- ✓ Specifically, on 2 November 2017, during the budget discussions on the 2018/2019 programme, the European Union put into question the holding of the 4th work session planned for October 2018, even though resolution 26/9 is clear on the issue.
- ✓ More recently, on 14 June 2018, the Member States of the European Union spoke with one voice, via the representative of the European Union, asking to “revert to the Human Rights Council to set out the future direction of work”, calling into question the binding nature of this international instrument, questioning the legitimacy of the Ecuadorian Chair, and pitting this treaty against the UN Guiding Principles of 2011, even though these Principles themselves provide for adopting binding norms at the national and international levels so that they are properly applied. In recent bilateral discussions, the European Union and several of its Member States also challenged the presence of civil society organizations in the negotiations.

The 36 signatory organisations of this call ask the European Union and its individual Member States to put an end to these strategies of obstruction, to accept the mandate of this intergovernmental working group and the essential presence of civil society organizations in the process, and to participate actively and constructively in drawing up an international legally binding treaty on transnational corporations and other enterprises with a business activity that has a transnational character, as clearly specified in Resolution 26/9.

The three previous negotiation sessions and the four consultations carried out by Ecuador in spring 2018 to prepare the publication of an initial version of the treaty made it possible to bring out broad consensus on some aspects.

This legally binding treaty must:

1. Pertain to business enterprises whose activity has a transnational character, regardless of the enterprise's social purpose and mode of creation, control and ownership.
2. Guarantee the primacy of human rights and the environment over norms in trade and investment matters.
3. Make business enterprises and their managers responsible (in civil, criminal, environmental and administrative law) with regard to respect of human rights and prevention of abuses and violations that are the direct or indirect outcome of their activities. This must apply throughout their value chain (including branches, subsidiaries, subcontractors, suppliers, affiliates, co-contracting parties, financial backers, etc.).
4. Introduce "duty of vigilance" or a similar mechanism of duty of care, to make parent companies and contracting companies legally responsible for the prevention of human rights abuses and crimes.
5. Recognise the judicial competence – as specified by the victim and according to Principle 25 of the Maastricht Principles – of one of the following jurisdictions: the jurisdiction where the harm occurs; the jurisdiction where the contracting company is registered or domiciled; a different jurisdiction, where the entity has its main place of business or substantial business activities; or any other jurisdiction that would take up the case in the name of universal competence, when such a violation constitutes a violation of a peremptory norm of international law.
6. Establish an international mechanism or an international tribunal in order to prevent denials of justice, to facilitate judicial cooperation between states, and to help the victims refer cases to the suitable national or international jurisdictions.

These points were often mentioned during the informal consultations organized by the Chair of the working group in recent months. They enjoy broad consensus among the social movements and NGOs that have carried out in-depth discussions on the matter.

Our partners around the world, the victims of violations and human rights defenders unanimously agree on the necessity for such a treaty and on the urgency for its adoption. The European Union and its individual Member States cannot ignore this.

We thus call on the Member States of the European Union to examine these aspects and to study the initial version of the treaty that will be published by Ecuador, and to do so with a constructive approach that prevails over the unproductive debates seeking to attack the legitimacy of this historic process.

Signatories:

11.11.11, Belgium	Belgium
Action Solidarité Tiers Monde	Luxembourg
ActionAid France	France
Afrika Kontakt	Denmark
AIETI	Spain
Associazione Jambo	Italy
Atelier ONGD	Spain
CCFD-Terre Solidaire	France
CCOO de Madrid	Spain
Colectivo Ansur	Latin America

Collectif Ethique sur l'étiquette	France
Commission Justice et Paix	Belgium
Confederación Sindical de CC.OO.	Spain
Coordinadora Estatal De Comercio Justo	Spain
ECOAR))) GLOBAL	Canada, Spain and France
Emmaus Aurinkotehdas ry	Finland
Fundación Mundubat	Spain
Greenpeace España	Spain
Grupo de trabajo sobre empresas y derechos humanos - Catalunya de Lafede.cat y la Taula Colombia	Spain
Iniciativas de Cooperación Internacional para el Desarrollo (ICID)	Spain
International Office for Human Rights - Action Colombia (OIDHACO)	Europe
JASS – Just Associates	Central America, Southern Africa, and Southeast Asia
KAESCH – Netzwerk für Nachbarschaftshilfe	Austria
Ligue des droits de l'Homme	France
Maan ystävät ry - Friends of the Earth Finland	Finland
NeSoVe / Netzwerk Soziale Verantwortung	Austria
New Wind Association	Finland
Red Flamenca de Solidaridad con la Comunidad de Paz de San José de Apartadó	Belgium
Ritimo	France
SETEM Catalunya	Spain
Südwind	Austria
Taula Catalana per la Pau i els Drets Humans a Colòmbia	Spain
ToxicsWatch Alliance (TWA) – Ban Asbestos Network of India (BANI)	India
Tansform!at	Austria
Unión Sindical Obrera (USO)	Spain
Union syndicale Solidaires	France