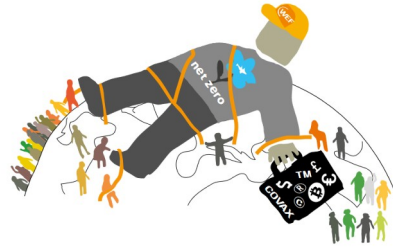


Global Campaign  
to **RECLAIM PEOPLES SOVEREIGNTY,**  
**DISMANTLE CORPORATE POWER**  
and **STOP IMPUNITY**



# **ELEMENTS FOR THE STATUTE OF AN INTERNATIONAL TRIBUNAL ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS AS A MECHANISM OF ENFORCEMENT AND GUARANTEE OF THE OBLIGATIONS OF THE LEGALLY BINDING INSTRUMENT ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS**

Geneva, October 2022

*Global Campaign to Reclaim People's Sovereignty, Dismantle Corporate Power, and Stop Impunity*

*The following document has been prepared in the context of the 8<sup>th</sup> session of the open-ended intergovernmental working group mandated to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights as established by Resolution 26/9 of the UN Human Rights Council.*

## **INTRODUCTION**

The international legally binding instrument on transnational corporations (TNCs) and human rights (the Binding Treaty) under negotiation in the Open-Ended Inter-Governmental Working Group (OEIWG) in the United Nations Human Rights Council (UNHRC) will be a concrete tool to regulate the activities of TNCs in international law with regard to human rights and the environment, and to guarantee access to justice and remedy for affected people and communities. To achieve this objective, the future Treaty must count on a mechanism that guarantees its effective implementation, with jurisdiction over the companies concerned, with the capacity to monitor compliance with the obligations laid down in the Treaty and, if necessary, to sanction non-compliance.

As social movements, affected communities, organisations, experts, academics, and different States involved in the negotiation of the Treaty have repeatedly pointed out, the incorporation of a jurisdictional mechanism in the LBI is a key element to its enforcement, without which it would be impossible to guarantee respect for and compliance with its content. In accordance, the "Elements Document" published in 29 September 2017 by the Republic of Ecuador, the Chair of the OEIWG, recognised that "States Parties may decide that international judicial mechanisms should be established, for instance, an International Court on Transnational Corporations and Human Rights".

Furthermore, the Chair has reiterated, in other occasions, that the future Treaty must provide for effective remedy for individuals and communities affected by violations of human rights, labour

rights and environmental damage<sup>1</sup>. In the same vein, in 2016, Ambassador Luis Gallegos, the Chair at the time, advocated for the creation of a "World Court on Business and Human Rights"<sup>2</sup>.

However, in the following years, Ecuador as both State and Chair, has distanced itself from this line of argument, absent from any of the drafts presented by the Chair between 2018 and 2021. Instead, these drafts attribute the control of the enforcement of the Treaty to a Committee of the Human Rights Council and to national jurisdictions, which are insufficient and do not guarantee the effectiveness of the future instrument.

Within this context, the organisations, collectives, affected communities and social movements gathered in the Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and Stop Impunity (Global Campaign), raise the need to include in the Treaty an International Tribunal with jurisdiction over TNCs, and to develop its functioning in a Statute.

In order to support the work of the OEIGWG in this regard, the Global Campaign has prepared this document containing a proposal with the fundamental elements of the Statute of the International Tribunal. The text is part of the overall proposal that the Global Campaign has developed and presented throughout years of negotiation<sup>3</sup>.

The essential elements of the proposed Statute are the following: the Tribunal will have jurisdiction over TNCs and other business enterprises with transnational activities, according to the mandate of Resolution 26/9. The Tribunal will have the capacity to investigate, prosecute, sentence and convict, imposing the penalties set out in its Statute, including imprisonment and fines, whose enforcement is the responsibility of the States Parties to the mechanism. The Tribunal will also exercise an advisory function on legal issues raised by States, organisations or communities. In addition, the Tribunal will have to function and be accompanied by an International Public Monitoring Centre on Human Rights and TNCs.

The proposal set out below details only some of the Tribunal's key elements: the seat of the Tribunal, its jurisdiction, the rights of affected people and communities, international cooperation, and the International Monitoring Centre. The Statute of the future Tribunal should also include a large number of other provisions to regulate procedural issues in detail, but they will be developed at a later stage.

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1 From our perspective on the Binding Treaty, and throughout this document, human rights are understood in a broad sense, encompassing both labour rights and environmental rights.

2 GALLEGOS, Luis and URIBE, Daniel, «The Next Step against Corporate Impunity: A World Court on Business and Human Rights?», *Harvard International Law Journal*, Vol.57, 2016, <https://harvardilj.org/2016/07/the-next-step-against-corporate-impunity-a-world-court-on-business-and-human-rights/>

3 See in particular:

i) The "Treaty on Transnational Corporations and Their Supply Chains with Regard to Human Rights" presented in the 3<sup>rd</sup> session of the OEIGWG in 2017:

[https://www.stopcorporateimpunity.org/wp-content/uploads/2017/10/Treaty\\_draft-EN1.pdf](https://www.stopcorporateimpunity.org/wp-content/uploads/2017/10/Treaty_draft-EN1.pdf) ;

ii) Friends of the Earth Africa: A Tribunal to Live:

[https://www.foei.org/wp-content/uploads/2018/10/Foei\\_Africa\\_english\\_FINALE\\_spread.pdf](https://www.foei.org/wp-content/uploads/2018/10/Foei_Africa_english_FINALE_spread.pdf) ;

ii) The proposal for a World Court on TNCs included in the "International Peoples Treaty on the Control of Transnational Corporations": <http://www.stopcorporateimpunity.org/wp-content/uploads/2016/11/PeoplesTreaty-EN-mar2015-1.pdf>

# ELEMENTS FOR THE STATUTE OF THE INTERNATIONAL TRIBUNAL ON TNCs AND HUMAN RIGHTS

## Preamble

The **Preamble** of the Statute of the Tribunal may include the following paragraphs/language:

- *Reaffirming the Human Rights Council Resolution A/HRC/RES/26/9 of 14 June 2014;*
- *Reaffirming the United Nations General Assembly Resolution A/UNGA/RES/60/147 of 16 December 2005, which insists on the necessity of following the guarantees provided by international law such as equal and effective access to justice; adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms;*
- *Aware of the distress of individuals and communities affected by transnational corporations (TNCs), and future generations, in the face of the negative impacts of the activities of TNCs and their global value chains, as well as the need to combine existing national and regional mechanisms with new legislations ensuring the responsibility of TNCs;*
- *Recognizing that while States have the obligation to respect, protect and fulfil human rights and to ensure that third parties also respect them, TNCs also have obligations with regard to the respect of human rights, whose non-compliance must be sanctioned;*
- *Bearing in mind the need for all affected peoples, communities, and individuals to obtain access to justice, without any type of discrimination, obstacle or difficulty, for human rights violations or environmental damage committed by TNCs in the course of their global value chain activities;*
- *Affirming the willingness to put an end to corporate impunity for human rights violations and environmental damages perpetrated by TNCs in the course of their global value chain activities;*
- *Emphasizing the right of every person to benefit from a social and international order in which their human rights can be fully realized;*
- *Recognizing all international instruments relating to human rights, international humanitarian law, corruption and the environment, and in particular those relating to economic, social, cultural, civil, political, labour rights and the rights to development, self-determination, and a healthy environment, as well as the rights of peasants, indigenous peoples, rural and native communities;*
- *Recognising the need to protect the environment from damage caused by TNC activities, including specifically damage linked to climate change;*
- *Determined, to these ends and in the interest of present and future generations, to create a permanent, independent and itinerant international Tribunal on transnational corporations and*

*human rights, linked to the United Nations system, with jurisdiction over human rights violations committed by TNCs in the course of their global value chain activities;*

## **1) The International Tribunal and its linkages with national jurisdictions**

The International Tribunal's is governed by the principle of complementarity, i.e., its actions will be complementary to State's jurisdictions. It will act, thus, when the domestic juridical mechanisms have been exhausted. However, and for the purposes of guaranteeing access to justice and all other objectives set forth in the Preamble, this principle of complementarity is linked to the creation of a safety net, specified in the Statute itself, that allows the Tribunal to exercise its jurisdiction if the State or States concerned do not act appropriately according to domestic laws and international human rights, labour and environmental standards.

Thus, the recognition of the principle of complementarity must take into account the institutional and political situation of the countries where the human rights violation or the environmental damage is committed, as well as the location of the parent companies. This means that, in case of failures, inefficiency, delays, lack of will, collusion or any other forms of obstruction of justice at the national level, the Tribunal will have the competence to receive claims even if domestic juridical mechanisms have not been exhausted. In other words, the principle of complementarity binding the future Tribunal and national courts must not entail a strict subsidiarity of the Tribunal regarding said courts. It cannot make the Tribunal inaccessible to the communities affected by the activities of the TNCs in case of e.g. the above mentioned conflicts. The underlying fundamental principle must be to allow effective access to justice and reparation.

The principle of complementarity between the future Tribunal and domestic jurisdictions can be developed as follows:

*- The jurisdiction of the Tribunal is complementary to national courts.*

*- The Tribunal shall exercise its jurisdiction, even when the case is being or has been the subject of investigation or conviction in a state, in case of failures, inefficiency, delays, lack of will, collusion or obstructions of any type at the national level, as well as in the interest of justice or greater protection of the rights of the affected communities<sup>4</sup>.*

## **2) Institution and seat of the Tribunal**

The International Tribunal should be a permanent tribunal, whose seat should be in a country of the Global South. To facilitate access to the Tribunal for affected individuals and communities, the Tribunal should have the opportunity to hold sessions elsewhere, including having itinerant sessions in all regions of the world, following the example of the Permanent Peoples' Tribunal<sup>5</sup>. In this sense, it would be an itinerant jurisdiction.

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<sup>4</sup> For instance, and as was specified in the regional context by the European Court of Human Rights, national remedies do not have to be exhausted if they are not available or sufficient to afford redress in respect of the alleged breaches (Aksoy v. Turkey, para. 52).

<sup>5</sup> See here: <http://permanentpeopletribunal.org/?lang=en>

The first article on the **seat of the Tribunal** may be formulated as follows:

- *The International Tribunal on Transnational Corporations (hereinafter referred to as "the Tribunal") is hereby established. It shall be a permanent, independent, and itinerant institution, capable of exercising jurisdiction over transnational corporations (legal persons) and their decision makers (natural persons) regarding human rights violations and environmental damages. The jurisdiction and operation of the Tribunal shall be governed by the provisions of this Statute.*

On the **institution of the seat of the Tribunal**, the Statute of the Tribunal may include the following:

- *The Tribunal is headquartered in ....., ..... («The host State»). (Which must be in a country of the Global South).*

- *The Tribunal and the host State decide on a headquarters agreement to be approved by the Conference of States Parties and thereafter concluded by the President of the Tribunal on behalf of that State.*

- *The Tribunal may sit in the territory of any State Party, following the provisions of this Statute in order to be closer and more available to the affected individuals and communities.*

- *In that consideration, the Tribunal can conclude agreements with regional human rights courts to be able, if necessary, to use their premises as well as the administrative and technical staff necessary for holding these mobile sessions.*

### **3) Jurisdiction of the Tribunal**

The regulation of the Tribunal's jurisdiction is the central pillar of the Statute as it defines the entities or persons that will be able to be prosecuted (personal jurisdiction) for which violations/crimes (material jurisdiction), in which territory (geographical jurisdiction) and time frame (temporal jurisdiction).

#### **i. Personal jurisdiction (*ratione personae*)**

The jurisdiction *ratione personae* will fall over TNCs as legal persons as well as on the natural persons who run them. To be effective, the future Tribunal shall reaffirm the provisions of the binding treaty, recognizing that parent companies have joint liability with the economic entities along their global value chains regarding the obligations established in the future Treaty. The Tribunal would have jurisdiction over TNCs, irrespective of the legal framework existing in the home, host, or the States where the violation was committed.

#### **ii. Material jurisdiction**

To meet the aforementioned purposes, it is fundamental that the future statute clarifies what are the violations and crimes within the competence of the Tribunal. In other words, the obligations of

TNCs enshrined in the future Treaty, if violated, should be covered and prosecutable by the future Tribunal. In the same vein, the future Tribunal must have the competence to apply the norms protecting the rights concerned, in particular norms of *jus cogens*<sup>6</sup>. Obviously, the Statute of the future Court will echo and be linked to the content of the future Binding Treaty.

In this sense, and based on the Binding Treaty proposal presented by the Campaign, the Statute would state the following:

- The **rights concerned** are the fundamental human rights and the obligations arising from human rights treaties and instruments, as set out in the Charter of the United Nations, in particular the instruments adopted regarding economic, social, cultural, civil, and political rights; the right to development, to self-determination and to a healthy environment; all the collective rights of indigenous peoples, native communities and of peasants and other people working in rural areas.

Furthermore, TNCs must respect other norms and instruments, in particular those of international humanitarian law, labour law, corruption rules and environmental regulations. In any case, TNCs shall respect the environment and abstain from realizing harmful activities, including any activities that could contribute to climate change.

- The principles and purposes of the Charter of the United Nations and the Universal Declaration of Human Rights;

- List of the **main legal instruments** that TNCs shall respect in their activities (open list): The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the eight fundamental Conventions adopted by the International Labour Organization; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on Biological Diversity; 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 Declaration on the Right to Development; the Declaration on Human Rights Defenders; the Declaration on the Right of Peoples to Peace; the Declaration on the rights of Indigenous people; the Declaration on the rights of peasants and other people working in rural areas; the Vienna Declaration and Programme of Action, the Durban Declaration and Programme of Action; the four Geneva Conventions and their Optional Protocols; the International Convention

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<sup>6</sup> We understand “Jus cogens Norms” as those norms of international law that are peremptory in nature, from which no derogation shall be allowed under any and all circumstances. Such norms are recognized by the International Community of States and provided for under Article 53 of the Vienna Convention of the Law of Treaties of 1969.

For purposes of this Statute, and without prejudice to the development of international law, “Jus cogens” prohibits, among others, trafficking in human beings, forced labor, genocide, racial discrimination and apartheid, torture, cruel and inhumane punishment, degrading treatment, violation of the right to self-determination, violation of the right to freedom of association, crimes against humanity, violation of humanitarian law, and the use or threat of use of force in international relations.

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.

- All relevant environmental and climate-change related international instruments such as: the Kyoto protocol and Paris agreement, the Convention concerning the Protection of the World Cultural and Natural Heritage, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the International Convention for the Prevention of Pollution from Ships, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants, Resolution 48/13 of the UN Human rights council which recognizes the right to a clean, healthy and sustainable environment as a human right, the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents, Kiev, 21 May 2003.
- Other relevant international instruments and universally accepted rights.

### iii. Geographic jurisdiction

The Tribunal shall have jurisdiction over human rights violations committed by TNCs and their decision makers or which occurred on the territories of the States Parties to the Binding Treaty and on the territories where these TNCs, their parent companies and other entities along their global value chain conduct their activities.

For the purposes of ensuring access to justice and reparation, **the Tribunal shall have jurisdiction to adjudicate a violation occurring in a State Party to the Statute and committed by a TNC located in a non-State Party, if the relationship of this company with the entity that caused the violation is established.** This point is fundamental to ensure the effectiveness of the future Treaty and the future Tribunal, and to prevent TNCs from being able to evade justice simply on the basis that the countries where they are based have not ratified the Treaty.

As noted in the first element, the Statute of the Court must reconcile the principle of complementarity with the recognition of the principle of *forum necessitatis*. In this sense, if the State court to which the claim is brought is unable or unwilling to carry out the investigation and prosecution, or if there are no guarantees for adequate access to effective judicial protection and redress, the International Tribunal will assert its jurisdiction. The aim is to avoid a denial of justice and to ensure access to reparation.

The question of the effects of the violations can be also important in environmental damages. For instance, the Tribunal should have jurisdiction over a violation that has occurred in a non-State Party but had an effect on a State-Party<sup>7</sup>.

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<sup>7</sup> There were discussions about that at the ICC, concerning Myanmar, since it was not a state party, but they used the fact that some of the crimes continued in Bangladesh, which is a state party, to establish jurisdiction over it, see <https://www.justsecurity.org/50793/icc-jurisdiction-rohingya-crisis-myanmar/> and <https://www.icc-cpi.int/bangladesh-myanmar>

In addition, the future Statute could use the principle established in the Rome Statute, which provides for a state which is not a party to the Statute to subject itself to the jurisdiction of the Tribunal for a specific case/situation (art. 12-3 ICC statute).

#### **4. Rights of affected individuals and communities and environmental protection**

The centrality of the **rights of affected individuals and communities** must be the compass of the future Tribunal on TNCs.

In several countries, individuals and communities affected by the activities of TNCs, when seeking access to justice and remedy, have to face the significant costs of justice, which results in depriving them of the right to an effective remedy. The Treaty and Tribunal must ensure **cost-free** justice for affected individuals and communities and for the organizations acting on their behalf. Even if the accused person is not declared responsible, the affected communities should not face financial burdens such as procedural costs or compensation to the accused<sup>8</sup>. This should be the case also for all the legal advisers' fees.

The cost of running the Tribunal must be borne by the States Parties to the Treaty, using an earmarked proportion of a wider tax on the profits of the TNCs located in the State in question. In the event that a company is actually convicted, the judgment may sanction the company with the payment of the costs of the proceedings.

Beyond a cost-free procedure for affected people and communities, the future Tribunal should consider the creation of legal support mechanisms for them.

Proposed provisions:

- *Cost-free access to justice and to legal advice is recognized and guaranteed for affected people and communities, and for the organizations acting on their behalf.*
- *The expenditure of the Tribunal shall be borne by the Conference of States Parties. The expenses of the Tribunal, the emoluments, and allowances of the judges, including the expenses of the Registry, shall be set out by the Conference of States Parties on the proposal of the Tribunal.*
- *In the case of a proven violation of human rights by an accused TNC, it may be sentenced, in addition to providing compensation to the affected people, the full bearing of the costs of the proceedings.*

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<sup>8</sup> Such possibility is, on the other hand, expressly previewed by the Rules of the European Court of Human Rights, although limited to persons that have insufficient means. It happens similarly in some domestic legislation. For instance, the Spanish law for “victims of terrorism” exempts these people from any legal cost and puts a free lawyer at their disposal for the whole process. It is to be noticed that this law was passed in September 2011, when economy was in full recession. This shows that a government's decision to grant free legal process to a limited group of actionable cases does not have a decisive influence as regards public investment and is just the result of a political decision.



To facilitate referrals to the Tribunal and promote the sourcing of documents that relate to TNCs and their activities, the **burden of proof** in court must fall on the alleged violators. It will be the responsibility of TNCs, their decision makers, and the entities in their global value chains to demonstrate that they did not commit the alleged violations and that they have fulfilled their commitments under the Binding Treaty and the Statute of the Tribunal.

On this point, it is necessary to emphasize that the participation of the host State in the violation will in no case entail a reduction of the responsibility of the accused company.

Moreover, access to information by affected people and communities is a crucial part of the process and their right to demand the necessary information from TNCs must be recognised.

Proposed provisions:

- *The burden of proof in court shall fall on TNCs and not on the affected individuals and communities.*
  
- *A relationship of control by the parent company over the global whole value chain is presumed to exist so that the burden of proof regarding control relationships between TNCs and all entities in their global value chains falls on the parent company and not on the affected individuals or communities.*

Given the public nature and interest in the protection of human rights, the willingness to ensure effective and integral access to justice, and providing reparation to affected individuals and communities, the future Tribunal must recognize and include mechanisms such as *actio popularis* and **class actions**<sup>9</sup>, for civil society organizations in States Parties to act on behalf of and for affected communities when they are unable, for security reasons or reasons of access to information or justice, to refer the case to the Tribunal. Such measure could avoid multiple and contradictory processes for affected people and communities and reduce the States' judicial costs. Similarly, affected persons and communities from different geographical areas should be allowed to join an action against a TNC when they claim to have suffered similar violations by the same perpetrator elsewhere.

Proposed provisions:

- *Class actions are recognized and regulated.*
  
- *Civil society organizations in States Parties can act on behalf of and for affected communities when they are unable, for security reasons or lack of access to information or justice, to present themselves before the Tribunal.*

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<sup>9</sup> UN treaty bodies such as the Committee on Economic, Social and Cultural Rights provide these kind of procedures. They are also included in some domestic legislation in countries such as the United States, Canada, Brazil, United Kingdom, Portugal and Sweden. In other countries, associations with legal status that bring together all of the victims can take action.

- *Affected people and communities from the same or from different geographical areas have the right to join a class action against a TNC when they claim to have suffered similar violations by the same perpetrator.*

**Prompt process** must be ensured. In addition, all necessary tools should be employed to ensure proportionate, sufficient and dissuasive sanctions and adequate redress for affected communities and individuals.

Other articles regarding the **rights of affected individuals and communities** may include the following paragraphs/language:

- *The Registry of the Tribunal establishes the Affected Communities and Witnesses Unit. This Division shall be responsible, in consultation with the Office of the Prosecutor, for providing advice and appropriate guidance to witnesses, to affected individuals and communities who appear before the Tribunal, and to other persons who may be at risk from the testimony of these witnesses, and to provide for measures and arrangements for their protection and security.*

- *A Trust Fund is established by decision of the Assembly of States Parties for the benefit of individuals and communities affected by human rights violations determined by the Tribunal. The Tribunal may order that the proceeds of fines and any other forfeited property be deposited into the fund.*

- *The Tribunal shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and respect of the individuals, communities affected and the witnesses. In doing so, it shall take into account all relevant factors, including, among others, age, gender, health status and the nature of the violation, in particular, but not limited to instances when the violation is aggravated by sexual, gender-based violence, or violence against children. The Prosecutor shall take such measures during the investigation and prosecution stage. These measures shall not be prejudicial to or contrary to the rights of the defence and the requirements of a fair and impartial trial.*

It is crucial to ensure that the chapter on the rights of affected individuals and communities, and its provisions in the Statute of the Tribunal, corresponds to the rights of affected individuals and communities, and to States' and TNCs' obligations in this regard in the Binding Treaty.

## **5. International cooperation**

International cooperation between states is essential for the effectiveness of the future Tribunal. States need to cooperate with each other and with the Tribunal during the trial and the enforcement phase.

The cooperation mechanisms can include joint investigations, transfer of proceedings, protection of witnesses, criminalization of the obstruction of justice by TNCs, extradition and transfer of sentenced persons, implementation measures to enhance cooperation among law enforcement authorities, among others.

The content of the articles on the **international cooperation** may include the following paragraphs/language:

- *Following the provisions of this Statute, States Parties shall cooperate fully with the Tribunal in its investigation and prosecution of violations within its jurisdiction.*
- *The Tribunal has the authority to issue requests for cooperation to States Parties (...)*
- *States Parties are required to cooperate with each other and with the Tribunal during the various stages of the proceedings, including the enforcement of the judgment.*
- *States Parties should provide each other assistance for the investigations and the proceedings and ensure that TNCs meet the obligations specified in the Binding Treaty.*

If a State does not cooperate or is complicit in the violation caused by a TNC, the Conference of the States Parties to the Binding Treaty is requested to deal with said State.

## **6. International Monitoring Centre on TNCs**

It is essential to create an International Monitoring Centre on TNCs to accompany and complement the functioning of the International Tribunal.

This Centre should be public and ensure the participation of affected people and communities, social movements and/or their representatives from other civil society organisations.

The Monitoring Centre shall be a space at the service of the affected communities, which would promote accompaniment, protection and social articulation. The Centre would also have a legal and political role, offering a space for inspection and investigation, with the ultimate capacity to recommend and propose sanctions and political reforms capable of confronting corporate impunity, to advance in the regulation of TNCs' activities and, ultimately, to protect human rights.

With regard to the International Monitoring Centre on TNCs, the Tribunal's Statute could provide for the following:

- *The International Monitoring Centre on Transnational Corporations (hereinafter the Monitoring Centre) is hereby established to assess, investigate and inspect the activities and practices of TNCs.*
- *The Monitoring Centre can provide legal and psychosocial support to affected people and communities.*
- *The Monitoring Centre can, if necessary, propose social changes in public policies in order to protect human rights from the harmful activities of TNCs.*

*- The Monitoring Centre can open an on-site public inspection process. The file is closed with a public resolution, through the issuing of recommendations based on the Monitoring Centre's findings, which could lead to civil, criminal and/or administrative liability of the TNC.*

*- The Monitoring Centre is public and jointly managed by States, social movements, affected people and communities and other civil society organisations.*

## **CONCLUSION**

The Global Campaign will remain committed to advancing this proposal in the 8<sup>th</sup> session of negotiations and beyond, to contribute to the establishment of an International Tribunal to help put an end to corporate impunity.