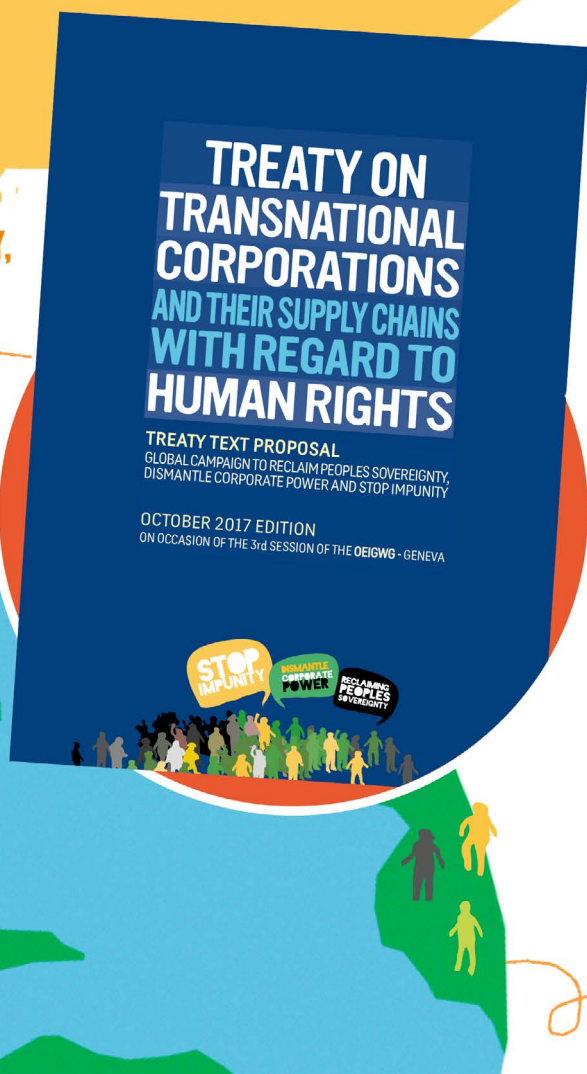


Key elements defended by the  
**Global Campaign for a Binding Treaty  
on Transnational Corporations  
and Human Rights**, based on the  
experiences of resistance by communities  
affected by transnational corporations

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



This written contribution is made on behalf of the  
Global Campaign to Reclaim Peoples Sovereignty,  
Dismantle Corporate Power and Stop Impunity.

---

**Contact:** [facilitation@stopcorporateimpunity.org](mailto:facilitation@stopcorporateimpunity.org)

**Authors:** Letícia Paranhos M. de Oliveira, Tchenna  
Maso, Andressa Soares, Manoela Rolland, Raffaele  
Morgantini, Erika Mendes, Alberto Villareal, Claudio  
Schuftan, Ivan Gonzalez.

**Design:** Coletivo Piu [@coletivopiu](https://www.instagram.com/coletivopiu)



<https://www.stopcorporateimpunity.org/>

<https://foei.org/>

<http://homacdhe.com/>

# INDEX

<b>Introduction</b> .....	<b>04</b>
<b>Scope of the treaty:</b> The focus must be on transnational corporations! .....	<b>08</b>
<b>The primacy of human rights in international law:</b> Above any trade or investment agreement .....	<b>13</b>
<b>Direct obligations for corporations!</b> .....	<b>15</b>
<b>Global Production Chains:</b> responsibility of the parent company .....	<b>19</b>
<b>International Tribunal on Transnational Corporations and Human Rights</b> .....	<b>24</b>
<b>The rights for affected communities:</b> Playing a leading role in the process from prevention to reparations .....	<b>29</b>
<b>Protect the instrument from corporate capture</b> .....	<b>34</b>
<b>Global Campaign to Reclaim Peoples Sovereignty</b> .....	<b>38</b>

This year marks the tenth anniversary of the [Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power, and Stop Impunity](#), a coalition of more than 200 organizations, movements, and communities affected by the activities of transnational corporations (TNCs). Building and consolidating the Global Campaign has been a peoples' global structural response to confront corporate power. More than a network, it is a space for deepening solidarity and support among the different struggles against TNCs and building an international law as seen from below.



The power of TNCs has spread throughout the world leading to systematic human rights violations, as well as destroying the environment. In response to this power, organised peoples are building forms of resistance to stop impunity. One strategy has been to develop frameworks to hold companies accountable. As part of the ongoing dispute, the 2014 [UN Human Rights Council Resolution 26/9](#) established [an open-ended intergovernmental working group to elaborate an international legally binding instrument on transnational corporations and other business with respect to human rights](#).

The Global Campaign has followed and influenced the negotiations for a Binding Treaty from the very beginning presenting a [concrete proposal for the treaty text in 2017](#). Known as the “Blue Treaty”, the proposal is proof that political and legal action can and must go hand in hand. The Blue Treaty is a technically solid proposal developed from “below”, based on the concrete experiences of the struggles of communities affected by transnational corporations.

The text reflects the historical vindications of peoples that demand justice. The movements organised within the Global Campaign understand that, on their own, laws cannot guarantee the end to impunity – this must be achieved through struggle and organisation. But the future Binding Treaty, especially if aligned with the one presented by the Global Campaign, can and should become an indispensable tool to advance towards the justiciability of rights and to make existing struggles more just.

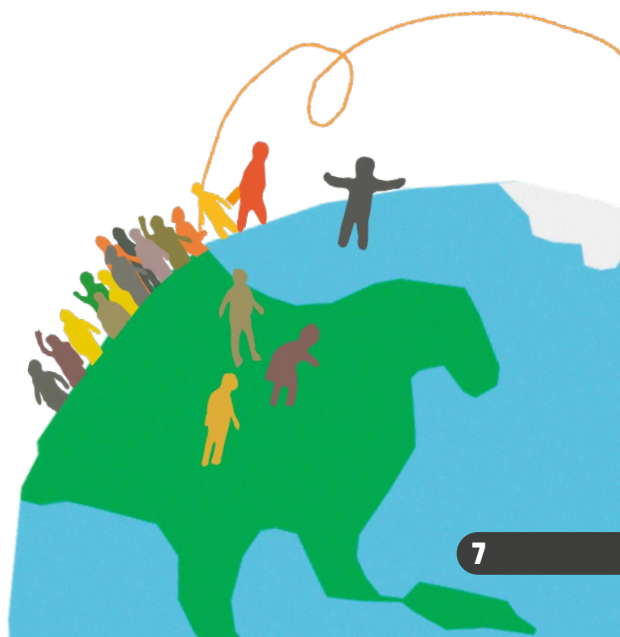
As the negotiations move towards the 8th round, it is becoming increasingly important to defend key elements that can ensure real accountability of transnational corporations and reduce the asymmetry of power. We do not want the new Treaty to be an empty text like, for example, the Guiding Principles on Business and Human Rights. Therefore, over the years and in the context of the current state of the process towards the next negotiation session, the Global Campaign

has been basing its advocacy work on 7 fundamental points that the future Treaty ought to encompass and that are based on the “blue treaty”. These elements are proposed to ensure the effectiveness of the proposed instrument and will eventually result in the necessary regulations to end the legal architecture of corporate impunity, ensuring accountability of TNCs and access to justice for affected communities.

These elements have, therefore, been used and promoted in all of the Global Campaign’s advocacy efforts. These efforts have made it possible to weigh in on the negotiations. Indeed, different countries submitted text proposals and amendments aligned, some more, some less, with the Global Campaign’s proposals. In the current state of affairs, characterized by a negotiation methodology in which the participating States were able to have a directly impact on the text, with their proposals being integrated - in track changes control mode - into the draft Treaty. This fact has allowed us to ensure that many of the elements promoted by the Global have been defended or recovered (it should be remembered that many of these elements were lost over the years due to a strategy of dilution of the key contents promoted by the detractors of the process).

Below, we present these 7 key elements, relating them to examples of how they could transform realities on the ba-

sis of concrete cases, and at the same time linking them to related proposals presented by some States. In the framework of the 8th session, the Global Campaign will continue the struggle to defend these points and demand that they be reflected in the next steps and next drafts of the negotiation. In this way, we will not only ensure the effectiveness of the future instrument, but also the democratic and transparent nature of the process.



## SCOPE OF THE TREATY:

The focus must be  
on transnational  
corporations!



**T**hroughout the years, peoples' movements and organizations have witnessed the impunity of transnational corporations, dedicating efforts to this agenda in order to reverse this process. With their economic and political power, corporations have built an architecture that reinforces their interests and violates people's rights, granting themselves the ability to interfere in countries' democracy. Thus, the goal must be to ensure that the Treaty covers entities that are outside the reach of countries' national laws.

In this sense, the scope of Resolution 26/9 is very clear, I.E., to develop a legally binding international instrument on transnational corporations and other businesses, as long as the character of the operational activities of these other businesses is transnational. It does not apply to local businesses governed under internal laws, unless they are part of the TNC's overall production chain. Countries and entities



that advocate for the broadening of the scope of application to all business enterprises are engaging in a tactic used by the companies themselves to divert attention from the core of the problem (TNCs' activities) to make the instrument inapplicable, as it becomes way too general. On the other hand, it is very important that the scope of rights covered by the treaty not be limited (for example, only to "gross" human rights abuses or crimes against humanity), and instead remain broad.

Below we highlight the proposals presented by some countries at the 7th session of the Working Group, aligned with the vision and position of the Global Campaign on the scope of the Treaty; these have to be defended:

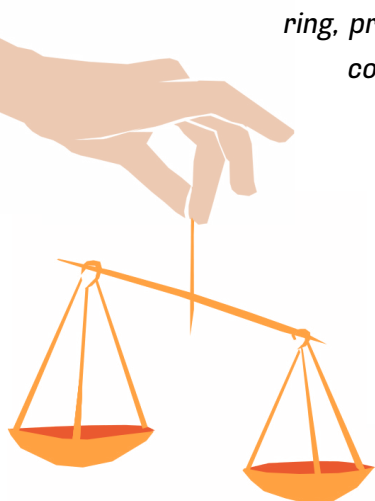


In the preamble (PP11) the proposals made by Palestine and Cameroon/South Africa: *Underlining that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the obligation to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses and violations through their own activities and addressing such abuses when they occur, as well as by preventing or mitigating human rights abuses and violations that are directly and indirectly linked to their operations, products or services by their business relationships; (Palestine)*

*Underlining that transnational corporations and other business enterprises of transnational character, regardless of their size, sector, location, operational context, ownership and structure have the obligation to respect all human rights, including by preventing or avoiding human rights violations that are committed all along its global production chain, directly and indirectly linked to their operations, products or services by their business relationships;*



In Article 1.3, which defines what is meant by business activities throughout the draft, Cameroon's proposal is in line with the perspective of the Global Campaign: *"Business activities" means any economic or other activity, including, but not limited to, the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by transnational corporations and other business enterprises of transnational character (natural or legal persons), which can be private, public or mixed, including financial institutions and investment funds, joint ventures including activities undertaken by electronic means.*



Egypt's proposal in Article 8.3 on legal liability states: *States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil and/or administrative sanctions where legal or natural persons conducting business activities of a transnational character have caused or contributed to human rights abuses or violations.*

#### ECUADOR



#### USA



#### CANADA



#### BRAZIL



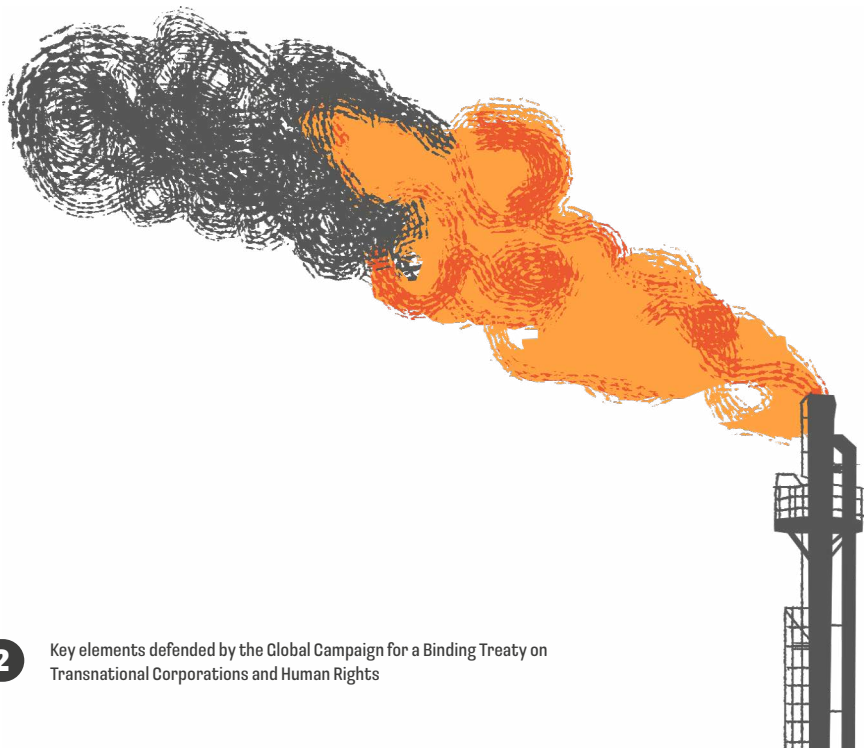
#### ARGENTINA



If this definition is adopted, cases such as Chevron/Texaco's oil spill in the Ecuadorian Amazonia will finally see resolution. In 2013, Ecuador's Supreme Court unanimously condemned the company for damages, ordering it to pay USD 9.5 billion. It turned out that the company no longer had any assets in the country, and since then the communities have lived through a saga to enforce their right in various countries (USA, Canada, Brazil, Argentina), without success, because of corporate power.

Meanwhile, corporate power was able to force an arbitration ruling against the State of Ecuador. This is the type of corporate power that must be stopped, and that is why focusing on transnational corporations is key, given their ability – as this case shows – to evade responsibility.

In response to this impunity, 21 May was declared Anti-Chevron Day – a global moment to demand justice for the crimes committed and to express solidarity with affected peoples.





## **THE PRIMACY OF HUMAN RIGHTS IN INTERNATIONAL LAW:** Above any trade or investment agreement

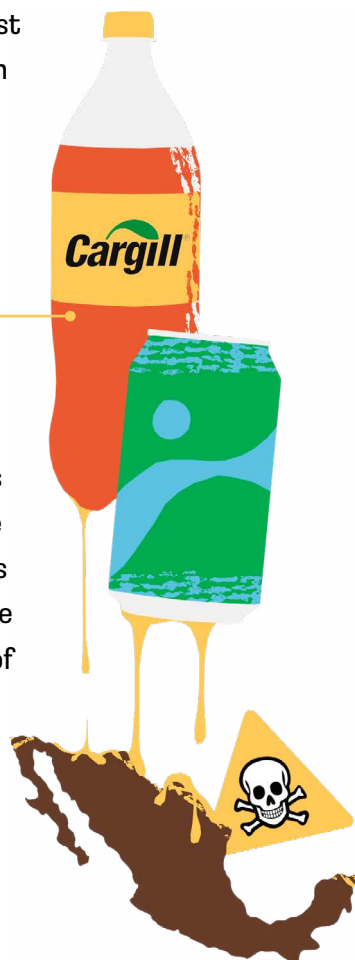
**R**eaffirming the primacy of human rights is to acknowledge that human rights have a hierarchical superiority over other legal norms such as trade and investment norms. The Binding Treaty is a human rights instrument and must be recognised as such, since the primacy of rights cuts across the entire instrument. Therefore, fighting to make sure that the primacy is stated, even in the “preamble” of the text, is crucial, as highlighted in the following proposals made by some like-minded States:



In the Preamble (PP11bis), the proposal made by Palestine says: *To affirm the primacy of human rights obligations in relation to any conflicting provision contained in international trade, investment, finance, taxation, environmental and climate change, development cooperation and security agreements.*

And Cameroon suggestS for inclusion (PP18 bis): *Reaffirming the primacy of International Human Rights Law over all other legal instruments, especially those related to trade and investment.*

In 2004, Cargill requested an arbitration against Mexico for a new law that established a tax on soft drinks made with corn syrup; This, to improve human health. The Mexican government was sentenced to pay more than USD 90 million, because the measure was interpreted as a discriminatory restriction on corn syrup, one of the main products produced and sold by the company. The outcome was decided by the International Center for Settlement of Investment Disputes (a body of the World Bank) and it affects Mexican people's right to health. Thus, trade interests took precedence over human rights – exemplifying the importance of enshrining the primacy of human rights. This is of course one of countless cases of TNCs that ended up attacking sovereign states before these private arbitration tribunals (more examples [here](#)), resulting in the denial of the sovereignty of peoples and states.



## DIRECT OBLIGATIONS FOR CORPORATIONS!



**D**eveloping an effective instrument depends on creating direct obligations for corporations as legal entities; THIS, in order to close the loophole through which they evade their responsibilities. TNCs must comply with international human rights law, international environmental law, and international labour norms without this making them subjects within international law, since there are differentiated obligations. In different areas, we already have binding legal frameworks that establish obligations for companies: in the field of corruption, environment, organized crime and in some ILO conventions, among others. It is time for the international human rights system to establish a binding international instrument to regulate the activities of TNCs, one capable of sanctioning all types of human rights violations committed by these entities.

Indeed, there is quite some resistance, both in academia, among some civil society organizations and States, to establishing obligations for TNCs, based on the assertion that only States, as formal subjects of international law, can be held directly responsible for the violation of human rights provided for in legal instruments. Another argument in this regard concerns the issue of State's sovereignty, since holding companies accountable would conflict with state's jurisdiction over a given territory. The Global Campaign elaborated a document where it provides elements to counter these false arguments

Establishing direct obligations for TNCs, separate and independent from those of States, is not only possible from a legal point of view, but is necessary to ensure the maximum effectiveness of the Treaty, as non-specific obligations for companies CAN delay the accountability process depending on national frameworks and procedures for affected communities to access justice.

In the current draft Treaty, there are many proposed passages in the Treaty in question that point to this point:



In the preamble (PP18 quater) Cameroon's proposal READS: *Recalling that transnational corporations and other business enterprises of transnational character have obligations derived from international human rights law and that these obligations are different, exist independently and in addition of the legal framework in force in the host and home States.*

In Article 6.2 bis on prevention: *Transnational corporations and other business enterprises of transnational character shall not take any measures that present a real risk of undermining and violating human rights. They shall identify and prevent human rights violations and risks of violations throughout their operations, including through their business relationships. (Cameroon).*



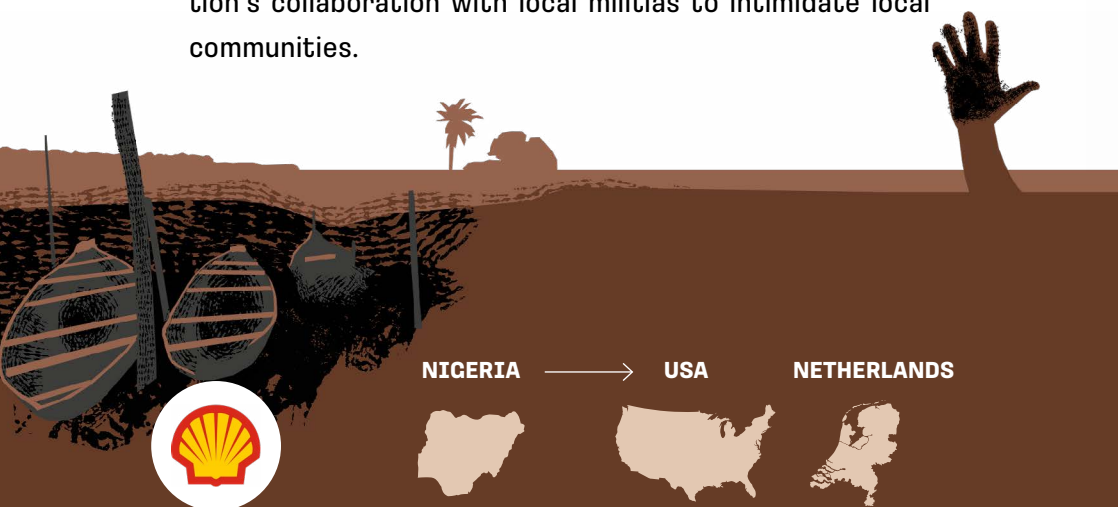
*In articles 6.8bis and 6.8ter, it is interesting to note Cameroon's proposal to extend obligations also to international financial institutions:*

*6.8 bis. International financial institutions shall identify and prevent human rights violations by any entity they support financially. They shall not give any form of financial support (such as loans, subsidies, guarantees) to business enterprises, including through their business relationships, if they know or should have known that the operations of those entities present risks for human rights and the environment. Any conduct of these institutions and their managers that contravenes these duties stands to be corrected by suitable disciplinary, administrative or other measures including the possibility of affected people or communities seeking compensation and reparations from the concerned International Financial Institutions.*

*6.8 ter. When participating in decision-making processes or any other action as member of International Financial Institutions, States shall do so in accordance with the States Parties' obligations established by the current (Legally Binding Instrument). They shall take all steps at their disposal to ensure that the institutions or the agreement concerned does not contribute to violations of human rights caused by transnational corporations and other business enterprises of transnational character, including in their business relationships*



The actions of **Royal Dutch Shell in Nigeria** are emblematic here. Oil exploitation caused water pollution and affected fishing and farming areas, besides proving the corporation's collaboration with local militias to intimidate local communities.



Courts in the United States and in the Netherlands have ruled against the corporation. However, the seriousness of the complaints clearly demonstrate the importance of recognising these corporations' direct human rights obligations since their actions clearly and directly violate human rights –this not being an isolated accident. The affected people and communities were forced to seek help in other countries' jurisdictions through legal procedures that took years before the corporation's obligations were recognised. The Treaty, with its direct obligations, will create a global legal mechanism to facilitate this process.



## **GLOBAL PRODUCTION CHAINS:** responsibility of the parent company

**T**o cover all transnational activities, the Treaty must encompass all activities along the TNC's Global Production Chains. The production chain involves other companies that contribute to the transnational corporation's operations, including contractors, sub-contractors, or suppliers with whom the parent company or those that it controls have business relationships. The responsibility of investors and funds that provide capital for transnational corporations is also part of the chain. This is crucially important in order to break the logic of externalising social, environmental, and economic responsibilities throughout the transnational corporations' supply chains. The principle of the parent company's shared objective responsibility must also be applied upwards so that the investors, shareholders, banks, and pension funds are held accountable for human rights violations perpetrated by the transnational corporations that they finance. There are ways to go on this matter in the current Treaty proposal, but a few key proposals can be highlighted:



In the preamble, Cameroon and South Africa's proposals read: *Underlining that transnational corporations and other business enterprises of transnational character, regardless of their size, sector, location, operational context, ownership and structure have the obligation to respect all human rights, including by preventing or avoiding human rights violations that are committed all along its global production chain, directly and indirectly linked to their operations, products or services by their business relationships;*

In article 1.5 (Business relationship), the proposal of Panama, Egypt and South Africa says: “*Business relationship*” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or relationship, including throughout their value chains, as provided under the domestic law of the State, including activities undertaken by electronic means.

In article 6.2, Palestine's proposal is relevant and says: *States Parties shall take appropriate legal and policy measures to ensure that business enterprises, including transnational corporations and other business*

*enterprises that undertake activities of a transnational character, within their territory, jurisdiction, or otherwise under their control, respect internationally recognized human rights and prevent and mitigate human rights abuses and violations throughout their business activities and relationships.*

*IN 6.4 bis we read: States parties shall ensure that parent and outsourcing business enterprises give all the necessary technical and financial means to the legal persons with whom they have business relationships and/or within their global value chain for them to be able to effectively implement the due diligence measures identified in 6.2 and 6.3. Complying with this duty of effective implementation remains the responsibility of the parent or outsourcing company. (Cameroon)*

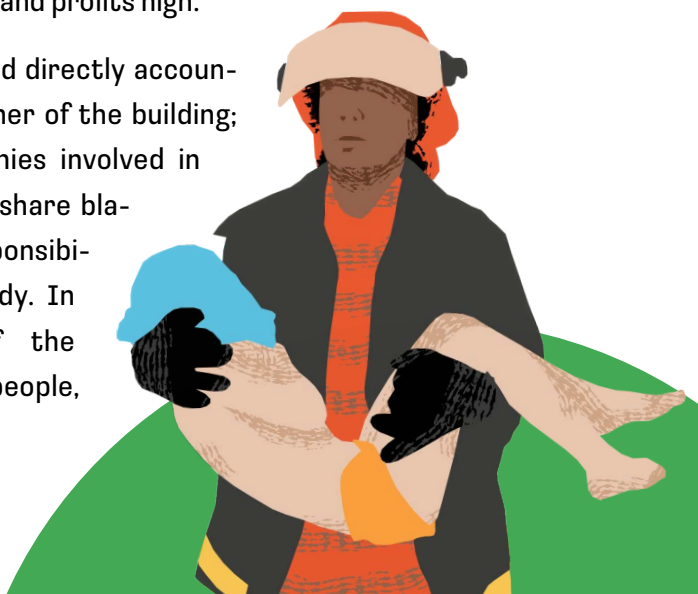


*In Article 8.10bis on legal liability, note: All companies involved in human rights abuse or violation, whether a subsidiary, a parent company, or any other business along the value chain, shall be jointly and several responsible for human rights abuses in which they are involved. (Palestine)*

*And in article 9.2 on adjudicative jurisdiction: Without prejudice to any broader definition of domicile provided for in any international instrument. A legal or natural person conducting business activities of a transnational character is considered domiciled including through their business relationships and global production chain at the place where it has its. (Palestine)*

The most prominent international case on the issue of production chains is the collapse of the eight-storey Rana Plaza building on 24 April 2013 in Dhaka, Bangladesh, in which 1,134 people lost their lives, most of them women. Several garment companies that were part of the textile production chain operated in the building. Companies such as H&M, Walmart, Primark, and Gap were involved in this production. The appalling working conditions to which workers were subjected were essential for the companies to keep prices low and profits high.

The only actor held directly accountable was the owner of the building; the other companies involved in the chain did not share blame and co-responsibility for the tragedy. In remembrance of the more than 1'000 people,



mostly women, who died in the building collapse, and the thousands of injured, 24 April was declared a day of global action in feminist solidarity against transnational corporate power. Nine years after the event, there is still no justice for victims and their families. This is why recognising shared responsibility throughout the chain and providing mechanisms to lift the corporate veil are crucial to ensure the future treaty's effectiveness.



An illustration on a brown background. A hand with a white skin tone points upwards with its index finger. Below it, a globe of the Earth is shown with green continents and blue oceans. A hand with a brown skin tone is positioned as if holding or adjusting the globe. Below the globe, a balance scale is depicted with two pans hanging from a central beam. The scale is tilted, with the right pan being lower than the left. A red sun is partially visible behind the globe.

## INTERNATIONAL TRIBUNAL ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS

**T**o ensure the implementation of the Treaty and compliance with the obligations set out therein, and in the event that national complaint mechanisms fail, affected people and communities should have recourse to the courts in the home or host States of the TNCs, or in States where TNCs have significant activities, in addition to any international jurisdiction. One of the Global Campaign's proposals is to create an International Tribunal on Transnational Corporations and Human Rights, which ought to have jurisdiction to receive complaints, investigate cases, and adjudicate and enforce decisions. This proposal, however, is not yet foreseen in the instrument under discussion.



It is important to recall that the Global Campaign Tribunal proposal was included in the 2017 “Elements Document”, i.e. the first document that the Chair of the process (the Mission of the Republic of Ecuador) presented to the Working Group to launch the negotiation process; it read:



*b.1. Judicial mechanisms: States Parties may decide to establish international judicial mechanisms, for example, an International Tribunal on Transnational Corporations and Human Rights.*

The Global Campaign has just published an “Elements Paper” on the Tribunal in question. It is a first document that analyzes and sets out the idea of how this Tribunal would function, what would be its competences, its jurisdiction, and what would be the mechanisms of access to remedy for affected people and communities.

On the other hand, at the level of the draft under negotiation at the present time, what we can highlight are some articles that set important measures of access to jurisdiction:



*In article 7.3 d on access to remedy: Removing legal obstacles, including the doctrine of forum non conveniens, to initiate proceedings in the courts of another State Party in all appropriate cases of human rights abuses and violations resulting from business activities in particular those of a transnational character. (Palestine)*

*Article 7.6: State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses and violations, including through prompt execution of national or foreign judgments or awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations. (Egypt)*

And in Article 9.1 on adjudicative jurisdiction, we read: Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses or violations covered under this (Legally Binding Instrument), shall vest in the courts of the State where... (Egypt)



*ON Article 9.3: Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles, including the doctrine of forum non conveniens, to initiate proceedings in line with Article 7.5 of this (legally binding instrument), including the doctrine of forum non conveniens unless an adequate alternative forum exists that would likely provide a timely, fair, and impartial remedy. (Egypt)*

The 1984 gas leak at the industrial plant of the subsidiary of US-based Union Carbide Corporation (UCC) in the Indian city of Bhopal caused the immediate death of more than 3,000 people, as well as the death and contamination of thousands more for generations.



The leak was caused by low safety standards in the storage of the gas, negligence, and economic interests aimed at reducing the company's costs.

A 1982 safety audit showed failures in the maintenance of the safety and warning systems. Despite the US corporation's awareness of the audit's results, a settlement was reached in 1989 in the Indian courts, and several lawsuits filed in the US were dismissed, because the company's liability did not extend beyond the territory of the subsidiary's operations. To this day, the parent company and its partners in the home country have no civil or criminal liability. UCC was acquired by **Dow Corporation** in 2001.



The Global Campaign reiterates: As explained in the section on the “primacy of human rights”, transnational corporations have investor-State arbitration tribunals where they can sue States. The opposite does not exist at the international level, pointing to the need to create a court where States and affected communities can sue corporations for crimes related to corporate violations of human rights.

## THE RIGHTS FOR AFFECTED COMMUNITIES:

Playing a leading  
role in the process  
from prevention to  
reparations



**T**he treaty must recognise the legitimate moral authority and legal entitlement of persons and peoples affected by the activities of TNCs and must focus on their protection through the establishment of effective access to justice mechanisms. Moreover, human rights defenders, environmental rights defenders, and plaintiffs must be protected. In this sense, the treaty must establish the right to reparations, to information, to justice (access to a just and impartial system) and to the guarantee that any human rights violation will not be repeated. Although the current text has not progressed in the recognition of placing affected communities at the centre, or even in using the term “affected” instead of “victim”, important steps have been made regarding access to justice:



In Article 4.2 c on rights of victims/affected communities: *be guaranteed the right to fair, adequate, effective, prompt, non-discriminatory, appropriate, child-friendly and gender-sensitive access to justice, individual or collective reparation and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, and ecological restoration; (Panama, South Africa, Palestine)*

Article 4.2 f: *be guaranteed access to legal aid and information held by businesses and others and legal aid relevant to pursue effective remedy, paying particular attention to greater barriers that at-risk groups face such as Indigenous Peoples, as well as women and girls; the right to access information shall also extend to human rights defenders and includes information relative to all the different legal entities involved in the transnational business activity alleged to harm human rights, such as property titles, contracts, business ownership and control, communications and other relevant documents; (Palestine)*

6.4.f bis: *States parties shall provide mechanism for financial guarantees to communities for activities with a high potential of damage to human rights, to be made immediately available in case of harm (Cameroon)*

7.1 bis: *State Parties shall ensure that reparations processes and mechanisms established to repair the harm caused by large-scale industrial disasters are designed and implemented, in consultation with, and with the full participation of affected communities, are transparent and independent from the business enterprise that caused or contributed to the harm, ensure independent technical assistance and are sufficiently resourced to offer the prospect of full reparation to all those affected. (Palestine)*

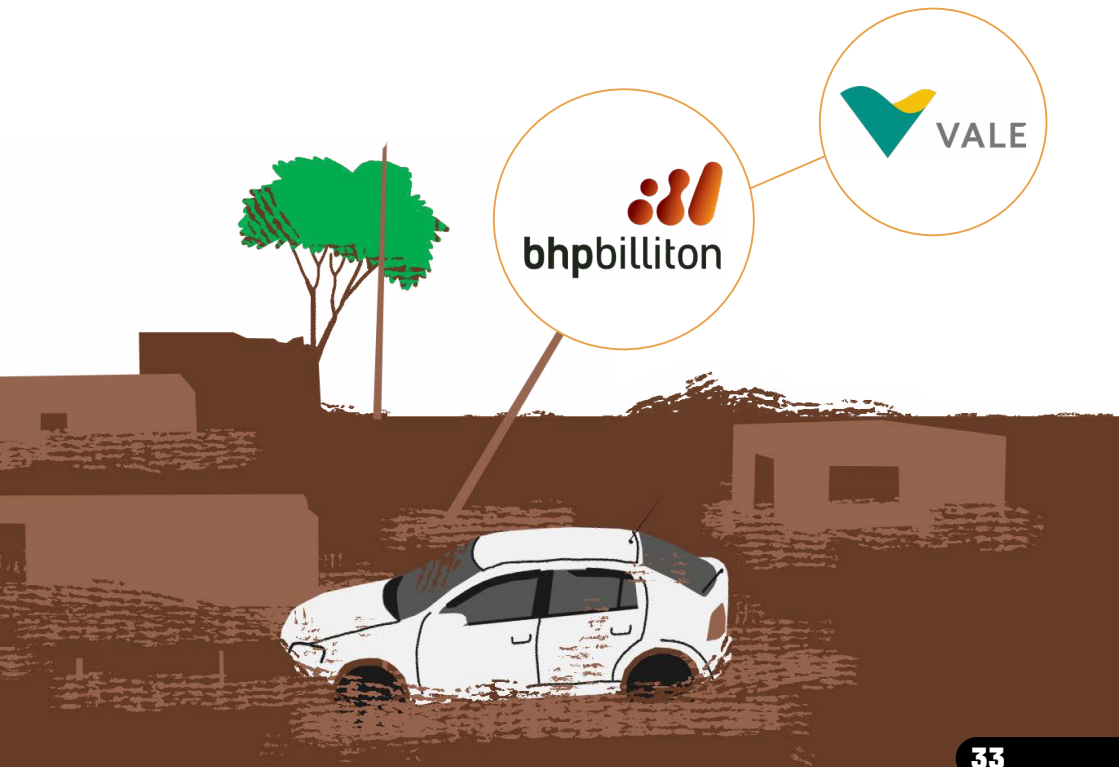
7.5: *States Parties shall, consistent with international human rights, humanitarian, criminal and environmental laws, enact or amend domestic laws to reverse the burden of proof in order to fulfill the victims' right to access to remedy, requiring corporate and State entities involved in the case to provide sufficient evidence for acquittal. (Palestine)*

It is also important to highlight the following proposal made for Article 14.3: *Nothing in the present (Legally Binding Instrument) shall affect any provisions in the domestic legislation of a State Party or in any regional or international treaty or agreement that is more conducive to the respect, protection, fulfillment and promotion of human rights in the context of business activities and to guaranteeing the access to justice and effective remedy to victims of human rights abuses and violations in the context of business activities, including those of a transnational character.* (Egypt, Pakistan, Iran)

After the [2015 collapse of Vale and PHP Billiton's Fundao dam](#), which polluted the Doce river basin in southeast Brazil, affected people and communities have been excluded from all reparation processes. An agreement between the Brazilian government and the company – made without the participation of affected peoples and denying them access to information – led



to the creation of a Foundation to manage the reparation process, which itself also lacked the participation of those affected. It was only after a year of negotiations and pressure from the communities that an additional agreement was reached providing for independent technical advisors chosen by the communities to advise the population on access to information and participation in the negotiations, based on the centrality of the people affected. The lack of recognition of the rights of those specifically affected by corporate violations makes them even more vulnerable. This is why Article 4 and other provisions are so important.





## PROTECT THE INSTRUMENT FROM CORPORATE CAPTURE

**T**he Treaty must include concrete measures against the influence of TNCs and their representatives (in particular the International Chamber of Commerce and the International Organization of Employers) through the entire process of preparation, negotiation, and implementation of the future international binding instrument. Over the past years of negotiation, the Chairmanship of the Working Group implemented initiatives to opening the negotiating space to TNCs and their representatives. Even in the past sessions, consultation spaces with these actors were created regarding the future of the treaty. The Global Campaign believes that corporations cannot be part of the process, because they lack the democratic legitimacy to do so, in addition to their clear conflict of interest. In this regard, the following article 6.8 of the current draft must be defended:



*In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), States Parties shall act in a transparent manner and protect these policies from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.*

However, the language of this article 6.8 could be improved, based on the amendment submitted by Cameroon:

In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), State Parties shall act in a transparent manner and protect these policies, **laws, policymaking processes, government and regu-**

BILL &  
MELINDA  
GATES  
foundation



**latory bodies, and judicial institutions** from the **undue** influence of commercial and other vested interests of entities **of the private sector including natural or legal persons** conducting business activities of transnational character. **Moreover, transnational corporations and other business enterprises of transnational character shall be bound by their obligations under this Treaty and shall refrain from obstructing its implementation by States Parties to this instrument, whether home states, host States or States affected by the activities of TNCs.**

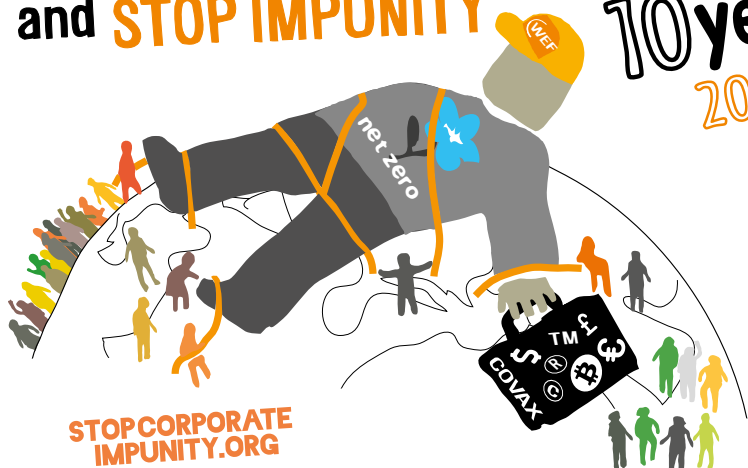
Furthermore, in Article 6.4.c on the obligation to conduct meaningful consultations with communities concerned by TNCs' activities, the proposal of Palestine and South Africa to add a part on undue influence of TNCs is important: (...) such consultations shall be undertaken by an independent public body and protected from any undue influence from commercial and other vested interests - where it is not possible to conduct meaningful consultations such as in conflict areas, business operations should refrain from operating unless it is for the benefit of the oppressed population.

Finally, Palestine made a relevant proposal in Article 16.5bis: *In implementing this Legally Binding Instrument, State Parties shall protect public policies and decision-making spaces from the interference and influence of commercial and other vested interests.*

Corporations' exercise undue influence by funding multilateral organisations THUS shaping the direction of spaces that should deliver critical content on their actions. EXAMPLES ARE the Conference of the Parties (COP) or the World Water Forum. In 2017, several civil society organisations denounced the UN Office of the High Commissioner for Human Rights for developing a partnership with Microsoft. The Melinda and Bill Gates Foundation has been criticised for exerting its influence on the set-up of COVAX. These partnerships, currently referred to as "multistakeholderism", seek to expand corporate interests over these spaces, and must be prohibited – as is proposed in the Treaty.

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

10 years  
2022



**T**he Binding Treaty under negotiation must provide a response to the existing architecture of corporate impunity and must address existing loopholes in corporate responsibility so that new mechanisms can be and are put in place to prevent violations so as to ensure full accountability and redress if violations do occur. It is on this guiding principle that the Campaign is built, giving voice and representation to those affected and excluded from access to justice, and to peoples and organized movements around the world that fi-

ght for social and environmental justice. The future text must reflect the concrete experience of struggle against corporate impunity. Some of the earlier proposals have become technical agreements to satisfy this demand. We are determined to continue to fight for an effective treaty that can bring transnational corporations to justice.

**Learn more about the Global Campaign and join us!**

**More information:**

<https://www.stopcorporateimpunity.org>

October 2022

**STOPCORPORATE  
IMPUNITY.ORG**



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

10 years  
2022



Support:

