

Joint Statement to the 1st session of IGWG on Business and Human Rights: Protection of Human Rights from Corporate Abuse

13 July 2015

We, the signatories to this joint statement

Welcome the establishment at the 26th Session of the UN Human Rights Council of the “open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights, the mandate of which shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises” (res 26/9). We call on all civil society organizations and States to actively and constructively participate in this process.

We are convinced of the need to enhance the international legal framework to protect human rights in the context of business operations. We are also mindful of the urgent need to improve access to justice, remedy and reparations for victims and to stop corporate human rights abuses. The treaty process complements other instruments and initiatives in the field of business and human rights.

On the process and participation of States and civil society

There is a large and growing group of human rights organizations, social movements, affected communities and other civil society organizations involved in this process. The strong mobilization at the time of the Human Rights Council decision to start this process gathered more than 600 signatures (from at least 90 countries) in support of a Joint Statement and ensured the presence of numerous national and international organizations in Geneva in June 2014.

With regard to the procedures to be followed by the Intergovernmental Working Group, it is important from the outset that the ground rules ensure full transparency and enable a participative process towards the elaboration of this legally binding instrument.

The process of elaboration of the prospective treaty should address the needs and realities of people and communities whose human rights have been infringed, or are being threatened, by corporate conduct.

We call on all States to actively participate in good-faith and constructively in the development of this treaty. States and the IGWG should safeguard their integrity from undue influence by actors from or related to the private sector whose primary interest in the process falls outside the objective of promotion and protection of human rights.

The existing rules for the participation of observers with ECOSOC status in the Intergovernmental Working Group should be applied. Special attention should be given to the participation of representatives from communities and organizations of people affected by transnational corporations and other business enterprises.

On the format, scope and content of the treaty

We reaffirm the content of the Treaty Alliance's Joint Statement adopted prior to the decision of the Human Rights Council of June 2014. A new phase starts now with the establishment of the open-ended Intergovernmental Working Group and the preparations for its first session on 6-9 July 2015. With a view to achieving meaningful progress at this session, we consider that the following elements must be discussed:

a) The treaty should require States to adopt legislation and other measures requiring TNCs and other business enterprises to adopt policies and procedures aimed at preventing, stopping and redressing adverse human rights impacts wherever they operate or cooperate. These measures should also cover business operations and relationships taking place in countries other than the countries where the business may be domiciled or headquartered. Companies should be subjected to appropriate sanctions for their failure to adopt such policies and procedures.

b) The treaty should clarify the kind of company conduct that will give rise to legal liability (civil, criminal and administrative). Through this international instrument, States will have the obligation to translate these standards into national legislation and enforce them. Offences committed against the environment and impacting adversely human rights should be included. Provisions for international legal and judicial cooperation among countries should facilitate the investigation and trial of cases of transnational nature.

c) The treaty should elaborate on the modalities in which TNCs and other business enterprises participate in the commission of human rights abuses, including corporate complicity and parent company responsibility for the offences committed by its subsidiary. Corporate legal responsibility should not exclude the legal responsibility of company directors or managers.

d) The treaty should allow people with a claim access to judicial remedies not only in their own home States, but in all other States that have jurisdiction over the concerned business enterprise. The jurisdiction of national courts of these States should extend to deal with these cases separately and jointly, and effectively guarantee access to justice to the victims.

e) The treaty should provide for an international monitoring and accountability mechanism. A dedicated unit or centre within the United Nations may improve the international capacity for independent research and analysis and for monitoring the practices of transnational corporations and other business enterprises. The needs and feasibility of a complementary international jurisdiction should be discussed.

f) The treaty should contain provisions requiring States to respect, protect and facilitate the work of human rights defenders and whistle-blowers. The right to

access to information of public importance and relevant to cases of business-related abuse should be guaranteed.

We consider that during the sessions of the IGWG there should be a full discussion about addressing businesses operating within a single State.

The enhancement of the international human rights system in relation to TNCs and other business enterprises is urgent and needed. We call on civil society organizations, social movements, affected communities and the public to actively promote locally, nationally and internationally the public debate around this process and mobilize for this treaty.