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**Bulletin N°51**

**September 2015**



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**“ There is no such thing as a developed and an under-developed world, there is only a single, badly developed world ”**

## **EDITORIAL**

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One year after the historic decision of the Human Rights Council to open negotiations on binding international norms to end the impunity of transnational corporations, the intergovernmental working group set up to do this held its first meeting from 6 to 10 July in Geneva.

Of course, this is only the beginning of a long process. However, it is already a major success, given the numerous maneuvers and pressures from the Western countries, with the European Union in the lead, which tried right up to the last minute to shut down the whole process.

The CETIM was present together with the Global Campaign to Dismantle Corporate Power and End Impunity, an international network comprising more than 200 social movements, trade unions and organizations representing victims and affected communities from all around the world.

In this "Special TNCs" bulletin, we return to this first session of the working group, the mobilization of social movements and the proposals presented with the Global Campaign.

This bulletin also presents the results of the initiatives undertaken by the CETIM at the Human Rights Council in support of the trade union Sinaltrainal (Colombia) and of the victims of Chevron in Ecuador.

We encourage you to visit our new website ([www.cetim.ch](http://www.cetim.ch)) where you will find complete information on these subjects as well as numerous pertinent documents.

Enjoy!

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## TRANSNATIONAL CORPORATIONS

## SUCCESS OF THE FIRST MEETING OF THE UNITED NATIONS WORKING GROUP

*The first session of the intergovernmental working group mandated with the drafting an international legally binding instrument to regulate the activities of transnational corporations (TNCs) and other business enterprises was held from 6 to 10 July 2015 in spite of adversarial maneuvers by Western countries. The CETIM was present, along with the Global Campaign to Dismantle Corporate and Stop Impunity, to give voice to the demands of social movements, victims and affected communities.*

This intergovernmental working group was established by the Human Rights Council in June 2014 and given the mandate of drafting a legally binding instrument to regulate, within the framework of international human rights law, the activities of transnational corporations (TNCs) and other business enterprises. It was a historic decision, coming after decades of discussions and fruitless attempts at the United Nations.

Following an initiative by Ecuador and South Africa, the resolution was adopted by a modest majority of the Human Rights Council, with the support of most of the countries of the Global South and in spite of ferocious opposi-

tion from the Western countries, which refused – and continue to refuse – any binding regulation in this area. This Human Rights Council initiative can, however, contribute to putting an end to TNC impunity for human rights violations, in particular in the Global South, and thus improve in the long term and at the global level the protection and the respect of human rights.

The resolution adopted by the Human Rights Council defines the work program of the intergovernmental working group for its first two sessions. These are to be devoted to discussions on the content, the scope, the nature and the form of the future international

instrument. During the third, the negotiations will begin in earnest on the content of the instrument, on the basis of

### "historic decision after decades of fruitless discussions at the UN"

a proposal which will have been prepared by the Chair-Rapporteur of the working group.

At the opening of the first session, on Monday, 6 July, the Ecuadorian Ambassador, María Fernanda Espinosa, was elected chair of the working group. In her first words as President-Rapporteur, Ambassador Espinosa recalled that "the discussion within the United Nations on a regulatory framework for transnational corporations and other business enterprises regarding human rights goes back more than forty years, and it is on this basis that a new phase opens today with, for the first time, the launch of intergo-

vernmental negotiations on the subject."

She further emphasized that "in a world in which nearly 80% of goods are produced through offshore production, by value chains which are in different national jurisdictions, it is important that there be, in the area of human rights, general and universal rules that are observed, in order to bring some security to all the actors: the states, the businesses, and, above all, the human beings who risk seeing their rights violated because of the abusive actions of businesses."

Victoria Tauli Corpuz, United Nations Special Rapporteur on the Rights of Indigenous Peoples, was then asked to deliver an opening statement. She added her voice to those of other United Nations Special Rapporteurs (on health and on freedom of association) and Independent Experts (on foreign debt and human rights and on the promotion of a democratic and equitable international order), who spoke in favor of binding norms at the international level to end TNCs impunity.

Ms Corpuz emphasized that "large scale corporate activities constitute today one of the



A delegate of the Global Campaign after the victory at the Human Rights Council in June 2014

most important sources of abuse of the rights of indigenous peoples in virtually all parts of the world.” She added that “while the global economic trends are increasingly characterized by dominance of corporations, their role extends beyond the capacities of any one national system to effectively regulate their operations”. Ms Corpuz pointed out that, on the one hand “foreign investors and transnational corporations are provided with very strong rights and extremely strong enforcement mechanisms [while] global and national rules dealing with the responsibilities of corporations and other forms of businesses are characterized by the form of soft law”.

Worse, “the global reality for many communities, as well as states from all parts of the world, is that corporations today have the ability under international trade and investment law to sue states when they pass laws that aim to improve human rights and environmental protections.” Thus, Ms Corpuz showed her sup-

port for a legally binding international instrument to “contribute redressing gaps and imbalances in the international legal order that undermine human rights, [and] help victims of corporate human rights abuse access remedy”.

bassador Espinosa introduced the week’s work program. It had already been drawn up informally with members of the various regional groups as well as civil society organizations. The proposal was to organize the meeting around seven theme-oriented sessions (a half day per session), with, each time, a panel of experts to introduce the discussion then opening the floor to the states’ delegations and civil society in order for them to present their proposals and demands and to put questions to the experts.

The first panel proposed dealt with the principles on which the treaty should be based. Then two panels dealing with the scope of the instrument were proposed, one on the subject of the actors to be targeted (transnational corporations and other business enterprises) and the other on the human rights to be covered by the instrument. Finally, four panels on the content of the future instrument followed, the first on states’ obligations, the second on the responsibilities of TNCs and other business enterprises, the third on the legal provisions to assure the responsibilities of TNCs and other business enterprises, and the fourth on the mechanisms to guarantee access to justice at the national and international level.

Obviously, this is still far from intergovernmental negotiations, for the objective of



The Ecuadorian Ambassador, Maria Fernanda Espinosa, during her first words as President-Rapporteur of the working group

this first session was rather, as stipulated in the resolution, to have an initial constructive exchange, to solicit the competence and advice of the independent experts and to allow the various delegations to

be informed about several of the main issues regarding the nature, the scope and the content of the future instrument, in order to lay the groundwork for the second session of the working group.

### Attempt to derail the process

The European Union (EU), however, seized the opportunity of the adoption of the work program to try to block the session and derail the entire process. It may be recalled that the EU, which as a block opposed the resolution’s adoption at the Council, had announced a series of conditions for its participation in the working group, in particular the naming of a “neutral chair”, not limiting the scope of the instrument to TNCs, reaffirming the commitment of all to enforcing the Ruggie Principles, and to guaranteeing that the necessary experience and knowledge would be mobilized and that civil society and representatives of business would be properly consulted.

Among these conditions, the one referring to the naming of a neutral chair for the working group – in other words neither Ecuador nor

South Africa – had generated considerable ill ease within the Palais des Nations diplomatic circles, including among some EU members. The usual practice is that the chair of a working group is held by a representative of one of the countries that presented the pertinent resolution to the Human Rights Council, in this case Ecuador or South Africa. All the intergovernmental working groups are chaired by ambassadors, but in this particular case, the EU demanded a neutral chair. And by “neutral”, should we understand “under its control” or under the influence of TNCs?

The name that had most circulated at that time was John Ruggie, the father of the Global Compact, which had opened wide the doors of the United Nations to TNCs, and author of the Guiding Principles on Business and Human Rights, both voluntary and non-binding, which allow the TNCs to moni-

## "protecting human rights and holding TNCs responsible for their actions"

After this intervention, Am-



tor themselves and determine their own sanctions. John Ruggie had not failed, publicly and on several occasions, to express his skepticism – indeed, his opposition – to the drafting of binding international norms on TNCs and human rights. It was thus no surprise that the EU wanted him to chair the working group.

We know also that since the decision of the Human Rights Council in June 2014, the EU has exercised substantial pressure at the bilateral level on Ecuador and South Africa to dissuade them from accepting the working group chair and to persuade them to even abandon their initiative. These maneuvers failed, and the Ecuadorian and South African governments held firm.

Nonetheless, during the adoption of the work program, the EU attacked again, demanding an additional panel on the implementation of the Guiding Principles (whereas this is not included in the working group's mandate), demanding also that the work program refer explicitly to all businesses and not only TNCs.

It should be noted in this regard that the resolution adopted by the Human Rights Council established that the instrument would cover TNCs and other enterprises, but a footnote clarifies that by "other

enterprises" is meant those whose activities have a transnational character. This is an extremely important point which gave rise to heated discussions at the time of the adoption of the resolution: ought the treaty apply only to TNCs and other businesses with transnational activities or ought it apply to all businesses? The formulation proposed by the chair in the work program did not prejudice the outcome of these discussions, simply retaining the wording on transnational corporations and

## "the EU left the room and did not reappear throughout the entire week"

other businesses, but the EU was resolved to impose its position and to reverse a Human Rights Council decision, demanding that the work program refer to TNCs and all other businesses.

The session was suspended for several hours until finally a compromise was arrived at. An additional panel on the Ruggie

Guiding Principles was to be added, but no change was to be made in the text concerning the scope of the instrument. With several hours' delay, the session finally began, while the European Union delegation left the room and did not reappear again throughout the entire week!

It had no doubt attained its objective of intimidation and disruption. The first two days were somewhat chaotic since it was necessary to compensate for the lost half day caused by the EU maneuvers.

It would be unjust to censure only the EU since, while several Western countries, such as Switzerland, participated as "observers", most boycotted the session. Although the ferocious opposition of the countries of the Global North was no surprise, it is always striking and disturbing to note that these same countries, so active when it comes to the interests of TNCs in negotiating new



The empty chair of the EU during the meeting of the working group

free-trade and investment treaties, are recalcitrant when it comes to protecting human rights and holding TNCs responsible for their actions.

Apart from the Western countries, participation was entirely honorable for this sort of intergovernmental working group. The major emerging countries were present, Brazil, China, India, Russia and South Africa in the lead. There was also a considerable number of Latin American, African and Asian countries present. In all, some fifty delegations were present in the room throughout the full week, mainly to hear the experts and to gauge each other's positions.

## Strong mobilization of social movements

Further, there was a major civil society presence, in particular representatives of social movements, victims and communities affected in the Global South, and they participated actively, in spite of the EU's maneuvers. The CETIM was present, along with the Global Campaign to Dismantle Corporate Power and Stop Impunity, an international network comprising more than 200 social movements, networks and organi-

zations of victims and of communities affected from throughout the entire world whose participation in the working group the CETIM supports. Some fifty delegates of the Global Campaign had made the trip to Geneva. We jointly organized a week of mobilization against TNC impunity, with at its center, on Wednesday evening, a major demonstration, in addition to a permanent presence throughout the week on the



Delegates of the CETIM and the Global Campaign during the working group in Palais des Nations

**8 PROPOSALS OF THE CETIM AND THE GLOBAL CAMPAIGN**

- 1. **Focus on TNCs** and close the gaps at the international level that allow TNCs to evade national jurisdictions and violate human rights with complete impunity;
- 2. **Recognize the obligation of TNCs to respect all human rights**, including national and international laws related to human rights, labour and the environment;
- 3. **Reaffirm the obligation of states to protect against human rights violations** committed by TNCs and codify their extra-territorial obligations in this regard;
- 4. **Reaffirm the hierarchical superiority of human rights norms over trade and investment treaties** and develop specific state obligations in this regard;
- 5. **Establish the civil and criminal responsibility** of TNCs

- and their executives, and their **shared liability** for the activities of their subsidiaries, suppliers, licensees and subcontractors;
- 6. **Include provisions on the obligations of international and regional financial and economic institutions**, in particular the IMF and the World Bank;
- 7. **Establish mechanisms at the international level to enforce the treaty and monitor its implementation**, including a treaty body, a Public Centre for the control of TNCs and a World Court on TNCs and human rights;
- 8. **Protect the process from corporate capture** and take measures so that civil society organizations are able to participate effectively.



Side Event organized by the CETIM and the Global Campaign

Place des Nations, with numerous activities, workshops etc.

The mobilization week was also focused on the struggles against privatization of services, especially public services, for at the same time there was taking place at the Australian mission a new round of negotiations on the Trade in Services Agreement (TiSA), which would further reinforce the impunity and power of TNCs.

The CETIM and the Global Campaign actively participated in the working group session and presented many proposals. A written statement with eight proposals regarding the nature, the scope and the content of the future instrument was offi-

cially submitted to the working group in the name of the Global Campaign. This statement was formally signed by more than 100 organizations and social movements from throughout the entire world, including the international peasant movement La Via Campesina and the international umbrella group of public service trade unions Public Services International (PSI). It had been drafted with the support of the CETIM, on the basis of proposals contained in the draft Peoples' Treaty of the Global Campaign, drawing also on the results of an expert seminar organized in 2015 in Geneva.

The session ended on July

10th 2015, with the adoption of the report and still without the presence of the EU and the major Western countries. Nothing was decided at this stage, and the discussions will continue during the second session, no doubt in a format closer to "negotiations". But simply that this first working group session took place was already something of a triumph!

Of course, it is only the beginning of a long process, but it represents an immense step forward: for the first time and after more than 40 years of fruitless efforts at the UN, intergovernmental negotiations opened on new binding norms to end TNC impunity.

It will be only at the third session, in 2017, that the chair of the working group will present a text with proposals regarding the elements that the future treaty should contain, and that the intergovern-

mental negotiations on the heart of the matter will start in earnest.

For the time being, the report of the first session will be presented to the Human Rights Council in March 2016, and a second working group session will be held, probably in October 2016. In the conclusion of the report, the Ecuadorian Ambassador expressed her intention to organize consultations during the inter-session period and to undertake the drafting of a new work program to be presented at the next session.



March against TiSA and the impunity of TNCs



## TRANSNATIONAL CORPORATIONS

## UN CALLS COLOMBIA TO ACCOUNT FOR ATTACKS ON SINALTRAINAL

*Following action by CETIM, the Human Rights Council special procedures have written to the Colombian Government to ask it to account for the numerous attacks on the SINALTRAINAL union. The Colombian government has to date failed to provide a satisfactory answer to the urgent communication of the UN Special Rapporteurs.*

**S**INALTRAINAL represents workers in Colombia's food industry, including workers in Nestlé and Coca-Cola, and is paying a high price for its struggle for workers' rights in Colombia's food industry: 25 of its members have been killed since 1986 and dozens have been threatened, attacked, displaced or exiled, or imprisoned on trumped-up charges. Colombia is probably the worst country in the world to be a trade unionist. Between 2000 and 2010, around 1,000 union leaders were murdered in Colombia and impunity prevails in 95% of cases.

The CETIM has worked with SINALTRAINAL for many years and helps it gain access to the United Nations human rights protection me-

chanisms in Geneva. In June 2014, the CETIM submitted a written case study on Coca-Cola in Colombia to the Human Rights Council. A representative of SINALTRAINAL came to Geneva to give evidence of the constant attacks on labor rights and trade union rights, and to denounce the murder of ten or more trade unionists and Coca-Cola's alleged links with paramilitary groups.

In September 2014 the CETIM sent the United Nations Special Rapporteurs three communications to alert them to the numerous human rights violations and request their urgent intervention with the Colombian Government to put a stop to the constant attacks of Nestlé and Coca Cola on workers'

and trade union rights in Colombia. The CETIM also requested the Special Rapporteurs to intervene with the Governments of the United

**"impunity prevails in 95% of cases"**

States and Switzerland, where Coca-Cola and Nestlé are based.

Following the CETIM's action, the UN Special Rapporteurs sent an urgent communication to the Colombian Government on 12 December 2014. In their letter the Special Rapporteurs expressed concern about the alleged killings, attacks and intimidation against SINALTRAINAL members and recalled that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee the right to life and safety of all individuals, as well as the right to freedom of association.

The Government of Colombia made a formal reply but it failed to provide a satisfactory answer to the facts

mentioned and to all the information requested. In their report to the Human Rights Council the Special Rapporteurs regretted "not having received information on the status of investigations or the protective measures taken to ensure the safety of many of the trade unionists mentioned" and expressed particular concern "about the unsafe environment in which many of defenders, trade unionists and social activists constantly operate and the high degree of impunity that prevails with regard to extrajudicial killings and death threats against them."

The CETIM is following this case closely and will continue to support SINALTRAINAL's struggle for the rights of food industry workers in Colombia. At present it is working on a further communication to the United Nations Special Rapporteurs, and preparing a complaint against Colombia to the Human Rights Committee regarding that State's responsibility in respect of the murder of a SINALTRAINAL member who worked for Coca-Cola.



Javier Correa, president of SINALTRAINAL, in June 2014 in Geneva

TRANSNATIONAL CORPORATIONS

# CHEVRON DENOUNCED BEFORE THE UN FOR VIOLATIONS OF THE HUMAN RIGHTS IN ECUADOR

*A delegation from the Union of People affected by the activities of the oil company Chevron Texaco in Ecuador (UDAPT) participated in the 29th session of the Human Rights Council with the support of the CETIM to denounce the merciless campaign that the transnational corporation is waging with the aim of criminalizing its victims and silencing their defenders.*

The Chevron case refers to the 22 years of litigation by indigenous and peasant communities in Ecuador against the transnational corporation Chevron to demand justice and compensation for the damage caused by 26 years of oil drilling in the Amazon region of Ecuador.

"The worst thing is that this pollution is not the result of an accident but the deliberate use of obsolete polluting technologies in order to save money," said Maria Eugenia Garces, representative of the UDAPT, during the side event "Chevron vs. the people of Ecuador: how


**"criminalize the victims"**

a large transnational corporation is trying to criminalize the victims and silence defenders" organized by the CETIM in June at the UN in Geneva.

Despite the judgments of Ecuadorian courts which have ordered Chevron to pay \$9.5 billion for causing the worst environmental disaster in the history of humanity, the oil company denies liability, and

### CHEVRON IN ECUADOR

- 26 years of oil drilling** in the Amazon region of Ecuador
- 450,000 hectares** of one of the richest areas of biodiversity on the planet polluted
- The death of hundreds of people** and a sharp increase in the rate of cancer and other serious health problems
- More than 60 billion litres** of toxic water dumped into the rivers and streams
- 880 hydrocarbon waste pits** dug
- 6.65 billion cubic meters** of natural gas burned in the open air.
- 60 legal firms and 2000 lawyers,** public relations agencies and lobbyists "to put in place their strategy that consists in intimidation and terror in order to silence anyone who risks raising their voice in favour of the affected communities" according to Maria Eugenia Garces.



devotes considerable effort and resources to avoiding the sentence, persecuting the victims and silencing those who support them. Chevron's chief lawyer said publicly in May 2009 that the company "would fight until hell freezes over and then continue to fight on the ice."

The delegation presented a written and an oral statement at the plenary session of the Human Rights Council and participated in a side event organized by the CETIM. Eduardo Toledo has highlighted "a legal campaign in the United States, and in other countries where the plaintiffs have appealed, to make the Ecuadorian judgement appear as a fraud and to present the vic-

tims as criminals and the oil company as innocent, with the sole aim of delaying the result which will arrive sooner or later: reparation for the damage caused in the Ecuadorian territories."

In February 2011, Chevron lodged a complaint before a New York court accusing the Ecuadorian plaintiffs and their supporters of extortion. According to the judgement, the decision of the Ecuadorian courts was fraudulent and any publicity campaign, the creation of Web pages, of blogs and the demands addressed to government authorities by NGOs could be considered as an attempt at criminal extortion. This was appealed on 2nd July 2014 but

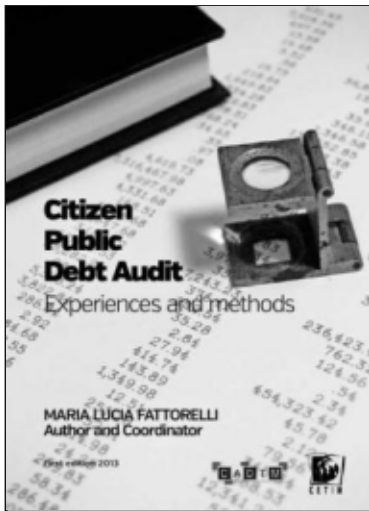
this judgment had already had catastrophic consequences for the victims and their supporters, by criminalising them, depriving them of financial support, and throwing suspicion on their integrity and their credibility.

In the face of this evidence of violations of human rights committed by Chevron, an urgent intervention by the Human Rights Council and by its special procedures was solicited in order to bring to an end these attacks on victims and their defenders, and to respect the judgement of the Ecuadorian courts.

## PUBLICATIONS

## CETIM PUBLISHER

**Citizen Public Debt Audit**  
Experiences and methods  
Maria Lucia Fattorelli



Price: CHF 10.- / € 10.- 264 p.  
Co-edition CETIM, CADTM, 2015  
ISBN 978-2-88053-110-2

A guide prepared with contributions from researchers and activists from around the world aimed at encouraging civil society campaigns for conducting Citizens Public Debt Audits based on transparency and the participation of society, in order to reveal the truth about the Debt System that subjugates most of the countries and their population.

## DISTRIBUTION

**La vérité sur la dette grecque.**  
**Rapport de la commission pour la vérité sur la dette publique grecque**



Price : CHF 15.- / € 15.- 208 p.  
Distribution: contact the CETIM  
ISBN 979-10-209-0352-5  
Only in french

In April 2015, the Greek parliament set up a commission to establish the truth on the Greek debt. Here is the full report. It makes for instructive reading for it challenge all current ideas on the subject.

In fact, the report is the fruit of rigorous investigations on the origin of this debt and its evolution, particularly since 1990. It analyzes the real causes of the increase and how the debt was contracted. It sheds clear light on the dramatic consequences for the population and the economy of the policies dictated by the Troika on the pretense of "resolving" Greece's problems. With this scathing document, we can understand the dirty underside of the European crisis.

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## WHO ARE WE?

The CETIM is a research and publication center devoted to North-South relations and an organization active at the UN defending and promoting economic, social and cultural rights, and the right to development. It serves as a clearing house for analysis and proposals of social movements of the Global South and North.

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