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Item 3: Interactive dialogue with the Experts' WG on TNCs

*Joint-oral statement: Centre Europe - Tiers monde (CETIM), FIAN International, Transnational Institute (TNI), Friends of the Earth International (FOEI), International Association of democratic lawyers (IADL), Corporate Accountability
On behalf of the Global Campaign to Reclaims People's Sovereignty, Dismantle Corporate Power and Stop Impunity*

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Madame President,

This is a joint-statement by CETIM, FIAN International, the Transnational Institute, Friends of the Earth International, the International Association of Democratic Lawyers and Corporate Accountability.

Much has been said about the importance of UNGPs as a landmark in the search for mechanisms to hold TNCs accountable for human rights violations. However, thousands of people affected by TNCs continue reporting about its high insufficiency and the systematic character of the human rights violations caused by TNCs.

The report presented by the Experts' Working group on the issue of corruption is no exception. It reaffirms the existing regulatory asymmetry: while it refers to binding norms in the fight against corruption, it defends voluntary mechanisms to achieve corporate accountability. This contradicts the principle of coherence that should govern international law.

If the international community does not move towards the consolidation of a robust internationally binding global regulatory framework, including human rights obligations for TNCs, all the efforts described in the report will be in vain. There is no impediment for international human rights law to advance in this area and to innovate in order to respond to the calls for justice coming from affected communities worldwide.

Analysis by a number of civil society organizations and academics shows that the structural influence that powerful corporations exercise on the diverse branches of power of many states impairs or nullifies their capacity to comply with their obligation to protect. This hinders states ability to regulate TNCs and hold them accountable at national level. So called corporate capture is exercised following very consistent strategies. Prior to the installation of TNCs in the territory, free trade and investment

agreements and public-private partnerships and contracts are established, which prepares a favorable regulatory environment for the protection of private interests (through ISDS for example), including ensuring impunity when these strategies lead to human rights violations.

The international binding legal framework to hold corporations accountable would serve to correct this distortion, obligating states to join forces and hold these powerful economic groups accountable for human rights violations along the global value chain. To affirm that the persistence of human rights violations by TNCs lies in the lack of implementation of the UNGPs is false. It ignores the intrinsic and constitutive failures of the principles. In fact, they are voluntary, ambiguous with regards to states and companies' obligations, and rely on a third pillar, which substitutes real access to justice for partial grievance mechanisms, which are often in fact used to hinder access to justice. Furthermore, the principles have been very restrictive on trans-border violations and extraterritorial obligations, which are key to hinder transnational impunity.

Studies¹ carried out on countries that adopted their National Action Plans demonstrate several inconsistencies, and the inability of those mechanisms to respond to the challenges of guaranteeing access to justice to the communities affected by human rights violations. The analyzes also point to the often-overwhelming influence of strong corporate interests and their widespread capture of the spaces for the elaboration of public policies in many states.

Even if the mandate holders could have the will, the structural failures of voluntary norms and mechanisms, as well as the weak mandate of the Experts' Working Group, impede to adequately respond to human rights violations committed by the TNCs. Currently there is still no international legal process efficiently guaranteeing access to justice for communities affected by the harms produced by TNCs. Therefore, we urge all UN member states to instead participate, in a constructive manner, in the inter-governmental process to elaborate an international legally binding treaty on TNCs and human rights. This is urgently needed and demanded by the persons and communities affected by TNCs.

Thank you for your attention.

Geneva, 9th of July 2020

¹ Some of these studies are available on: <http://homacdhe.com/wp-content/uploads/2018/10/Caderno-de-Pesquisa-Homa-Planos-Nacionais-de-A%C3%A7%C3%A3o-EN.pdf>, e <http://homacdhe.com/wp-content/uploads/2018/10/Caderno-de-Pesquisa-Homa-Planos-Nacionais-de-A%C3%A7%C3%A3o-EN.pdf>