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**CETIM**

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**“There is not a developed world and  
an underdeveloped world  
but a single world badly developed.”**

## **EDITORIAL**

Once again, the UN Intergovernmental Working Group (IWG) charged with establishing a binding treaty on Transnational Corporations (TNCs) was the centre of clashes between lobbies representing TNCs and those wishing to legally govern their actions. The revised version of this draft treaty, which was examined by the IWG last October, has little impact, given that it does not sufficiently respond to the needs and the challenges faced by the communities affected by TNCs.

The news reminds us every day of the urgent need to make real change by taking appropriate action against these entities that continue to display a blatant disregard for human rights. TNCs are heavily implicated in the destruction of the environment and their capacity to avoid taxation goes without mention. From Chile, to Madagascar, and even the Middle East, the failure of neoliberal policies that favour TNCs is clear to see. They not only result in gridlock, but exacerbate present problems and conflicts, including armed conflicts.

Last November, within the context of the UN Universal Periodic Review, the CETIM provided a platform for representatives of Malagasy Civil Society, who denounced the fear and the repression exerted on their villagers by parties aiming to monopolise their land, which is rich in natural resources and minerals.

In Switzerland as well, the question of insufficient development is still on the agenda. The UN Special Rapporteur on the right to development recently paid an official visit to Switzerland, where he formed findings and recommendations on the country's implementation of the right to development and their sustainable development goals.

As for CETIM publications, a book on Tahar Haddad, the thinker, trade unionist, and Tunisian politician, was published in the “Pensées d’hier pour demain” collection.

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## TRANSNATIONAL CORPORATIONS

# UN NEGOTIATIONS ON THE BINDING TREATY ON TRANSNATIONAL CORPORATIONS: QUO VADIMUS?

*The 5th session of the UN intergovernmental working group in charge of drafting a binding treaty to regulate the activities of transnational corporations (TNCs) took place in Geneva from 14th-18th October 2019.*



The working group got to down to business with a presentation of the revised version of the draft treaty by the Presidency, held/carried out by Ecuador. Many national delegations and civil society organisations commented on the draft.

The CETIM, as a member of the global campaign<sup>1</sup> and in close cooperation with it, actively participated in presenting a number of amendments, despite the presidency's attempt to sideline civil society at the start of the working group.

Unsurprisingly, the debates in the working group were partially focused on the scope and the responsibility of TNCs within the framework of the future treaty. Some states (Ecuador, Spain and Mexico among others) as well as TNCs lobbies supported broadening the scope to all businesses as proposed in the revised version of the draft. While France supported this position, it also acknowledged that the proposed demands would be untenable for small companies. For Argentina national companies are already subject to national law. Most states (in particular the African Union) rejected broadening the

scope to all businesses and called for the mandate of the Working Group, namely exclusively targeting TNCs and other businesses of an international nature, to be upheld. Russia and China tabled a number of amendments and expressed their concerns about the content of some articles.

According to our analysis, the content of the revised project falls very short of resolving the problems raised by TNCs and does not take into account most of the claims made by the affected communities. The revised project actually contains many inaccuracies and creates confusion about the scope of the future binding treaty which is extended to any type of business. The joint, solidarity-based responsibility of parent companies for the breaches committed by entities in their value chains is also not outlined. The aim of these changes was to render the future treaty meaningless. The ability of TNCs to bypass national jurisdictions and evade democratic and legal checks are real underlying reasons. It needs to be remembered that these drastic changes meet the needs of certain stakeholders who have vigorously contested

1 The Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity. It brings together more than 200 members, representatives of victims, affected communities and social movements from all over the world.



the drawing up of this treaty (TNCs lobbies and some powerful states).

Regarding the obligations outlined in the draft, they are essentially borne by the nation state. As we all know, in the current context of neoliberal globalisation, no state can monitor the activities of TNCs alone, given their economic and legal versatility across borders.

Thus the revised draft is moving dangerously away from the original spirit of resolution 26/9 which set the mandate for the working group. Such a draft waters down the initial aim of the negotiation process, namely the legal framework of the transnational activities of private entities which breach human rights and cause irreversible environmental damage.

Furthermore, the Brazilian delegation tried to oust civil society from the negotiation process by tabling a formal proposal to this effect at the end of the week. This attempt was unsuccessful thanks to strong opposition from the members' states of the non-aligned movement.

After the debates, the working group asked its chair to table a new revised version of the draft treaty to be submitted at the 6th session.

For the CETIM and the global campaign, it is obvious that the new version will have to state the obligations of TNCs and other business of a transnational nature if we want to prevent human rights violations and ensure access to justice for communities and people affected by these entities.

We will continue to campaign for some key elements to be retained in the draft treaty such as the rights of affected communities and people, joint solidarity-based TNCs responsibility (parent companies) with their value chain from a civil, penal and administrative perspective, the question of jurisdiction (state of origin, host state and forum necessitatis), an international implementation mechanism which is efficient and effective and so on. We call for the inclusion of grassroots claims and proposals. For us, the future treaty absolutely has to guarantee access to justice for affected communities, regulate TNCs activities in a binding way and clearly reaffirm the supremacy of human rights in all economic and trade agreements.

There is a fight for social justice and against the impunity of TNCs going on in the working group. The CETIM and the global campaign will continue with their efforts to contribute to putting in place an effective and efficient legal framework to regulate the activities of these entities. We are building international law from the bottom up.

## RIGHT TO DEVELOPMENT

## UNITED NATIONS SPECIAL RAPPOREUR ON THE RIGHT TO DEVELOPMENT VISITS SWITZERLAND

*From 23 September to 2 October 2019, The UN Special Rapporteur on the right to development, Saad Alfaragi, carried out an official visit to Switzerland in order to evaluate its implementation of the right to development and to identify the challenges it poses in view of forming recommendations for the fulfilment of the aforementioned right in the country. During this period, he was met by the CETIM and the Geneva Federation for Cooperation and Development (GFCD).*



In his preliminary findings and recommendations, which were made public following his visit, the UN Special Rapporteur on the right to development expressed his preoccupations concerning, amongst others, poverty and Switzerland's international cooperation policy.

The Special Rapporteur indicated that 615,000 people are affected by poverty in Switzerland, and that 1.2 million are at risk of falling into poverty. Those affected by poverty include single-parent families with 3 or more children and untrained or undereducated individuals. According to the Rapporteur, the increased costs of rent and health insurance are a factor in their situation. In addition, the reduction of unemployment benefits and disability benefits has led a large number of people to claim benefits over the last 15 years.

The Special Rapporteur expressed his concerns regarding the new direction of Switzerland's recent policy on internatio-

nal cooperation (2021-4), which featured new criteria for humanitarian aid and development cooperation. Alfaragi stated, "I fear that these new criteria are representative of a shift in priorities for Switzerland. This change may work to the detriment of their international commitments as part of its sustainable development goals." The Special Rapporteur also expressed his fears

regarding the Swiss Government's planned reduction of its contribution to development assistance for the period of 2021-4, "It is also worrying that the government aims to reduce its level of development assistance between 2021-4. I urge the government of Switzerland to honour its commitment to contribute 0.7% of its gross national income (GNI) towards official development assistance (ODA), as outlined in the Addis Ababa Action Agenda and Agenda 2030."

Alfaragi also touched on the continuance of gender inequality in Switzerland and argued in favour of implementing government initiatives to combat this issue.

The Special Rapporteur's findings and recommendations echo the sentiments expressed by the Swiss civil society and the CETIM several years ago. Alfaragi's full report will be submitted to the UN Human Rights Council in September 2020.

In the Resolution 33/14, adopted in 2016, the UN Human Rights Council created the role of Special Rapporteur on the right to development with the goal of promoting, protecting, and fulfilling the right to development. This is achieved through a coherent and integrated implementation of the 2030 Agenda for Sustainable Development and other 2015 internationally agreed outcomes, including the Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, and the Paris Agreement on climate change.

## VIOLATIONS IN MADAGASCAR

*On the 6th of November last, during the 34th session of the UN Universal Periodic Review, the CETIM organised a parallel conference on the theme of poverty and human rights violations in Madagascar.*

The Malagasy population is among the poorest in the world. The inhabitants, the majority of whom live in rural areas, live on less than two American dollars a day and have only limited access to drinking water and electricity.

Added to this extreme poverty, during the parallel conference organised by the CETIM to report human rights violations on the island, members of different Malagasy associations who were present at the UN reported insecurity and repression.

### The theft of zebus and summary executions

The dahalo, or zebu theft was originally carried out by Malagasy people from the cultures in the south of the island. This tradition has been hijacked by armed groups and is now associated with organised crime that spreads terror, pillaging and torture and is thought to have caused over 4000 deaths in recent years. Most of the victims are innocent peasants who are wrongly accused of being dahalos.

According to Malagasy human rights activists, the bandits are apparently instructed by people who are financially or politically powerful to attack communities and villages in the south to force them off the land. "(...) if the state continues to do nothing and the perpetrators are not punished, there are suspicions that the government is instructing these people", said Paolo Emilio Raholinarivo Solonavalona, president and founding member of the Malagasy Youth Association for the Protection of Human Rights, Democracy and Republican Values, after attending the UN conference.

On the other hand, during police operations summary executions of villagers are carried out under the pretext of combating the dahalos.

### Coveted Lands

Paolo Emilio Raholinarivo Solonavalona explains: "*The indirect displacement of peasants could be related to fertile lands*". Several local witnesses back up this version of events. In fact, the local areas affected by these massacres and executions are situated in zones where the subsoil is exceptionally valuable. In addition to rearing cattle, it contains significant and varied mineral resources.

*"The riches are exploited by multinationals, which inhabitants oppose"* explains Hanitra Bakolinirina Ramanankilana, president of the Vie Neuve Association for the pro-



motion of human rights. She continues, "*The population ask: help us cultivate the land, don't hunt us. But the state does nothing*".

The death penalty was abolished in Madagascar and as a result, there is no valid motive to justify these summary executions. Why are they carried out and why are they still going unpunished?

For Hanitra Bakolinirina Ramanankilana, the real problem is the weak government. "*The rule of law must be strengthened, to combat corruption and impunity by transposing all international laws on humanitarian rights into national legislation, by imposing appropriate penalties on the perpetrators of these crimes*".

## HUMAN RIGHTS

### CETIM'S STATEMENTS AT THE UN

*Last September, CETIM issued Declarations on various themes during the 42nd session of the Human Rights Council. Below are some extracts.*

#### **Examination of the Report by the Special Rapporteur on the Right to Development**

CETIM agrees with the Special Rapporteur that the effective implementation of the Right to Development requires above all respect for sovereignty and democratic decision making at the national and international level. In this regard, TNC activities, financial institutions and international trade must comply with the objectives of the UN Charter and the Declaration on the Right to Development. We also consider that a legally binding instrument on the Right to Development is required for effective implementation of this right.

#### **Implementation of the Declaration on the rights of peasants**

Zainal Arifin Fuat, member of La Via Campesina, spoke on behalf of CETIM:

The historic adoption by the Council and the UN General Assembly has provided an impetus to the international community to address inequality and discrimination which disproportionately affects rural populations worldwide. Since its adoption, a new phase of implementation will become part of our common agendas, as a process in which peasants, states and UN bodies cooperate.

The programmatic and public policy approach of the UN Decade of Family Farming should contribute to clarity and to various ways of implementing the norms of the Declaration.

#### **Extra-judicial executions in Madagascar**

CETIM is alarmed by the continuing extra-judicial executions of zebu pastoralists in the South of Madagascar, perpetrated by the armed forces of successive governments since 2012. The repression clearly aims to terrorize and displace the populations of regions that are rich in natural resources in order to make their lands available to transnational corporations in the mining and agro-in-

dustrial sectors. Given the insecurity that has plagued several regions for far too long and the inaction of Madagascar authorities, CETIM requests that the Special Rapporteur on Extra-judicial Executions undertake a country visit to carry out an investigation.

#### **Interactive Dialogue with the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

The International Association of Democratic Lawyers (IADL) and CETIM warmly welcome the report



of the Special Rapporteur, Mr. Baskut Tuncak. The set of principles he has developed represents a major contribution to workers' struggle for decent work.

States and business actors can eliminate or minimize workers' exposures and must do so with urgency. To this end, we call on all member states and business enterprises to implement the "Principles on human rights and the protection of workers from exposure to toxic substances" elaborated by the Special Rapporteur on the basis of existing international human rights norms, ILO conventions and other multilateral agreements.

### Private military and security companies

The CETIM is particularly concerned by the difficulty in establishing responsibilities and obtaining redress for victims in the case of violations committed by private military and security companies (PMSC). These entities have become major actors in the current world economic system, posing a challenge to the enforceable rule of law by states. In addition, in relation to legal and administrative matters, PMSC use complex legal arrangements to short circuit national laws. Unless PMSC are banned, it is essential to regulate their obligations and ensure that they are held responsible for their actions, and not only through state responsibility, as usually defined.

### Unilateral, coercive measures and human rights

CETIM supports the initiative to develop a UN Declaration on the negative impacts of unilateral coercive measures (UCM) on the enjoyment of human rights. UCM are measures applied to States, individuals or entities by a state or a groups of states or regional organizations without or bypassing the authority of the UN Security Council, with a view to modifying the behaviour of states that are directly or indirectly targeted. (This is a definition proposed by Aлена Douhan, Director of International Law at MITSO Univeristy in Minsk, Belarus, during a meeting of the Human Rights Council.)

We consider that it is important that the future project highlight those instruments, the norms of which are systematically violated, when such measures are applied. We think that the future project needs to be clear on the illegality of UCM as an instrument of foreign policy of a State. It is essential to assert the illegality of such instruments without conditions; i.e. not only when they directly cause human rights violations, as the current project provides. In this regard we urge all States to participate actively and constructively in the development of this instrument.

**Complete versions of the Declarations are available on our website, at <https://www.cetim.ch/statements-at-the-un>**



## PUBLICATIONS

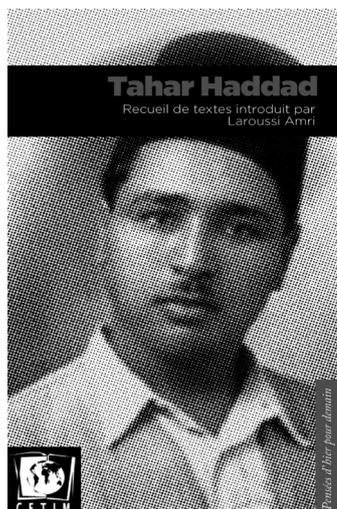
## LA PASSION DU SCHISTE. CAPITALISME, DÉMOCRATIE, ENVIRONNEMENT EN ARGENTINE

By Grégory Lassalle and Vincent Espagne

The CETIM pays tribute to Vincent Espagne who passed away at the end of October 2019. Vincent Espagne co-wrote the book "La passion du schiste. Capitalisme, démocratie, environnement en Argentine", with Grégory Lassalle. Together, they carried out a year-long study in Argentina to analyse how the country made the decision to develop non-traditional hydrocarbons in the Nuequén region in Patagonia. The book gives a panorama of the stakeholders involved, their interests and their course of action, by revealing the balance of power that is poisoning Argentinian democracy.

Grégory Lassalle was in Geneva for the "Filmar en Latina America" film festival at the end of November to present his film, "Eldorado/Une vie meilleure". A documentary in which he portrays the different people that directly support the oil company located in Neuquén.

You can order the book, "La Passion du schiste. Capitalisme, démocratie, environnement en Argentine" on the CETIM website.



### TAHAR HADDAD

A compilation of texts introduced by Laroussi Amri.

The compilation of texts by Tahar Haddad came out in October, in the "Pensées d'hier pour demain" collection. Tahar Haddad was a Tunisian politician and thinker who died in 1935 at the age of 36; he was an early trade union and feminist activist. He published various works and many extracts of his work featured in this publication. "Les travailleurs tunisiens" discusses implementing the General Confederation of Tunisian workers which he was heavily involved in.

"Notre femme dans la législation tunisienne au début du XX<sup>e</sup> siècle", his most famous piece of work, triggered a real turning point in the perception of the status of women in the Tunisian society.

He died in exile, in extreme poverty. Despite the support of a progressive minority, Tahar Haddad is still subject to fierce hostility from the reactionary sectors of society.

To order the book, visit the CETIM website.

## SUPPORT US

The protection of human rights isn't possible without you. In order for us to continue working to defend oppressed people, your support is vital. Your donations will allow the CETIM to persist in its desire to give a voice to the voiceless.

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