

## **Submission to the UN Working Group on Business & Human Rights Pax Christi International, 28 February 2019**

Pax Christi International welcomes last year's Zero Draft "Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises" and the Zero Draft Optional Protocol on national implementation mechanisms. Although these instruments should be strengthened further, they are truly historic instruments giving important recognition to the pledges of victims of human rights violations linked to business activities and those supporting them.

Our peace movement appreciates the work undertaken by the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises. We are thankful for the opportunity to give our views through this call for submissions as part of a broader, inclusive and participatory process of consultations in which several of our members and partners have participated. Hopefully such input can contribute to a strong treaty that can bring justice for victims and reinforce attention and action for business-affected communities by civil society, governments, international organisations, churches and corporations.

Globally many of our members and partners are striving for the promotion and protection of the human rights of those victimised by business activities. Through our Latin American project, Pax Christi International has been witnessing growing human rights violations by extractives companies in Mexico, Guatemala, Colombia, Peru, Chile and Paraguay. Through capacity-building and advocacy work we support our members and partners who are accompanying communities in their nonviolence resistance activities.<sup>1</sup>

Considering the devastating impact of extractive activities and other business sectors on communities in Latin America and in other regions of the world, we call upon all UN member states to actively and constructively participate in the next round of negotiations<sup>2</sup> and to contribute to a robust legally-binding treaty that promotes and protects human rights and the environment. This is in line with the Sustainable Development Goals (SDGs), to which UN member states have committed themselves, and would send a strong signal to businesses and governments who have changed or might consider changing their business and sustainable development policies.<sup>3</sup>

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<sup>1</sup> See our position paper on extractives and Latin America of October 2017: <https://www.paxchristi.net/news/pax-christi-international-releases-position-paper-extractives-latin-america/6808>.

<sup>2</sup> We recall the June 2018 Open Letter to UN member states by the Treaty Alliance, a civil society campaign joined by 1500 individuals and 1100 organisations, available at: <https://www.treatymovement.com/statement>

<sup>3</sup> In particular we would like to highlight the decision of the Canadian government of January 2018 to set up an ombudsperson, the first country in the world to do so. We hope that the ombudsperson can start taking up office soon with sufficient mandate and resources. We also hope that other countries will follow this landmark decision.

## Recommendations regarding the draft text for a legally binding instrument on business and human rights

In response to the working group's invitation for submissions, Pax Christi International would like to identify several areas where we hope the treaty draft text can be strengthened through subsequent draft texts and the next rounds of negotiations. Please note that we support several asks of other civil society members and UN member states which were expressed during the Fourth Open-Ended Intergovernmental Working Group meeting of last year October. These are our recommendations:

### *Scope of the treaty*

- To not only limit the scope of this treaty to “business activities of a transnational character” but also to include national business activities. This is crucial for our Latin American members and partners who are helping communities resisting extractive activities and holding foreign businesses accountable, as many transnational extractive companies function through companies set up nationally.
- To make clear which international human rights law instruments are covered by this treaty by mentioning the nine core international human rights conventions<sup>4</sup>, the Universal Declaration of Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples and the eight core International Labour Organization (ILO) conventions.<sup>5</sup>
- To refer to human rights instruments that give protection to the most vulnerable groups, for example women, children, persons with disabilities, indigenous peoples, migrants, refugees and internally displaced persons, as they have specific needs and rights. It is our experience of working with Latin American indigenous communities that they are often not aware of these rights, so they should be informed and supported in standing up for them.

### *Content of the treaty*

- To explicitly impose in the treaty text an obligation for businesses to respect human rights that would set out a clear and universal framework for all corporations and support businesses who respect them. There is a profound lack in the text on the issue of tackling the impunity of businesses that violate communities' human rights.
- To reaffirm the primacy of human rights, especially in the context of state obligations to abide by trade and investment legal regimes and investor-state dispute settlement structures in which there should be space for the voices of communities to be heard and to be given the necessary weight in decision-making.
- To make specific references to human rights and environmental defenders and assistance to them. The draft text mentions “victims”, “representatives”, “families”, and “witnesses” but leaves out human rights and environmental defenders that don't necessarily fall under one

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<sup>4</sup> OHCHR, 'The Core International Human Rights Instruments and their Monitoring Bodies', available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

<sup>5</sup> International Labour Organization ('ILO'), 'Conventions and Recommendations', available at: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

of these categories, even though they defend these groups and are in many contexts in the world increasingly under threat and criminalised.

- To have more attention for "gender issues" from a differentiated approach, as a group more vulnerable in the case of human rights violations by business activities and as human rights and environmental defenders. Additionally, special attention should also be paid to indigenous peoples, urban and rural mestizo and Afro descendent communities whose human rights are more often affected by businesses activities.
- To use stronger language regarding consultations, as governments and businesses have the obligation to seek free, prior and informed consent from communities before business activities start and to respect outcomes. Governments should make resources available for the organisation of consultations, as well as by international cooperation. Reference should be made to this right being recognised by ILO Convention 169 on indigenous peoples.
- To include in the provisions on the right to information that indigenous communities should have access to information in their own languages prior to and during corporative activity, as well as after, if human rights abuses occur. Our members and partners on the ground see a great need for such information, and with 2019 being the UN International Year for Indigenous Languages, this can offer momentum.
- To make specific reference under research for international cooperation to objective and independent research with truthful information on the environmental impacts of business activities, as such information is very often unavailable and our Latin American members and partners report that some businesses make their own biased reports.

#### *Means of implementation of the treaty*

- To include in the treaty text exactly how often the Conference of States Parties would be held, which as a minimum should be yearly. Currently, the draft treaty text only mentions that the "States Parties shall meet regularly in a Conference of States Parties". These conferences are important meetings for members of civil society to give important information with regard to the progress of the treaty.
- To strengthen the possibilities that civil society will have to interact with the Committee of Experts, such as through sending alternative reports with information from the ground next to states parties reports and to send in specific complaints on emblematic cases. The Committee's observations and recommendations could offer important support for the work of civil society members at the national level.
- To include in the provisions on the Committee of Experts that they will be in charge of investigating human rights abuses caused by business activities and that they can visit the countries where victims have denounced such abuses in order to verify what has happened on the ground and meet with them as well as other parties.

Pax Christi International is a Catholic peace movement with 120 member organisations worldwide promoting peace, respect for human rights, justice and reconciliation. Many of the communities that our member and partner organisations in Africa, Asia and Latin America support have direct experience of the harm that can occur if companies ignore their impact on human rights. In Latin America we carry out a specific capacity-building and advocacy project related to communities who are nonviolently resisting extractives industries.