**Thursday 29 October 15-18pm (amsterdam time) Erika Africa**

 Article 15. Institutional arrangements (Committee, Conference of the Parties, International Fund for Victims)

Mr. Chair-Rapporteur,

I am Erika Mendes from Justiça Ambiental in Mozambique, delivering a joint statement on behalf of Friends of the Earth International and CETIM, members of the Global Campaign.

We have been working alongside communities and individuals whose rights have been violated by TNCs, as they try to access justice through our domestic judicial system, while witnessing all kinds of strategies being deployed by the companies and their representatives to weaken legislation and its effective implementation, especially here in the Global South.

We are therefore very worried that the current draft still doesn’t establish an international judicial mechanism to ensure its effective implementation, in fact virtually nothing has improved in this regard since the last draft.

To address this, we propose a new chapter in Article 15, establishing an International Court on TNCs that may be set up in parallel and be complementary to the already proposed Committee, as follows:

**International monitoring and enforcement mechanisms**

*1. The UN Treaty Bodies on Human Rights and other UN related complaint mechanisms shall be competent to directly receive complaints against TNCs and International Economic and Financial Institutions. They shall forward these to the International Court on TNCs, as instituted below.*

*2. Conflicts between TNCs and States involving human rights issues shall not be appealed to international arbitration tribunals on trade and investment. The instances that have jurisdiction to solve these conflicts are: international, national and regional jurisdictions, and mechanisms for monitoring and enforcement acting in a complementary manner.*

*3. To guarantee the implementation of the obligations set out by this Treaty, an International Court on Transnational Corporations and human rights is established. The Court has the competence to receive, investigate and judge complaints against TNCs for violations of the rights concerned and the obligations established in this Treaty.*

*4. The Court protects the interests of the individuals and communities who are affected by the operations of TNCs, which includes ensuring full reparation for them and imposing sanctions on TNCs and their managers.*

*5. The Court’s rulings and sanctions are enforceable and legally binding.*

*6. The International Court shall function in accordance with the annexed Statute of the present Treaty.*

Mr. Chair, without an appropriate enforcement mechanism, the rights contained in this legally binding instrument will remain highly theoretical. As such, Friends of the Earth Africa groups prepared a concrete proposal for the functioning of this International Court, and we invite you all to read this publication available at the FoEI website.

Thank you.

**statement last year for inspiration:**

Mr. Chair-Rapporteur,

I am Erika Mendes from Justiça Ambiental – Friends of the Earth Mozambique, we’re members of the Southern African Campaign and the Global Campaign to Dismantle Corporate Power. We work alongside communities affected by the many transnational corporations exploiting Mozambican resources and people - women in particular. Their quest for justice is a hard, tiring and almost impossible task.

We fought for over four years, in the Mozambican courts, just for the recognition of the rights of families who were living inside a mining concession area, during its operations. This is particularly problematic if we consider that the current land, resettlement and mining regulations clearly state that extractive companies must adequately resettle communities *before* starting their operations. Mr. Chair, member states present here, I’m sure you are aware of the vast power of Transnational Corporations to avoid justice and deploy all kinds of strategies in order to weaken the judiciary system in the countries of the Global South where most of their operations regarding resource extraction and human rights violations take place. In our view, the mandate of the Committee proposed on Article 13 of the current Revised Draft falls short of the existing UN treaty bodies. Article 13 must include the possibility of complaints against transnational corporations, and the Committee’s recommendations must be binding.

We also believe that without the establishment of an independent international implementation mechanism, it will not be possible to provide access to justice for affected peoples. Taking into account the power imbalances and TNCs ability to escape their obligation to comply with judgements of national courts, as it has happened with Chevron in Ecuador and Shell in Nigeria, we call for the creation of an international court for transnational corporations, with jurisdiction to receive, investigate and adjudicate complaints against TNCs for their human rights violations. The Court’s decisions and sanctions must be directly applicable and legally binding.

This mechanism may be set up in parallel and complementary to the Committee proposed in Article 13.

Several groups from Friends of the Earth Africa have worked together on a concrete proposal for the functioning of this International Court. Please refer to this publication, available at the back of the room, for more details.

**Thank you.**

**Article 15. Institutional Arrangements**

The Committee remains a very fragile mechanism, as in the previous Draft.

It is essential to have a clear definition of the criteria for the choice of possible candidates appointed by the States to compose the Committee, which should explicitly exclude individuals linked to the business sector.

In addition to the national courts, it is necessary to establish an International Court to receive individual and collective complaints..

Article 15 should include the possibility of lodging complaints against TNCs and make the Committee's recommendations binding. In this sense, we propose adding the following provisions:

***Proposed new paragraph 15.4.a.bis****: The Committee receives and considers complaints submitted by victims and affected communities concerning the activities of transnational corporations that act in contradiction to this legally biding instrument.*

***Proposed new paragraph 15.4.a.2bis****: States Parties recognize the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Treaty.*

***Proposed new paragraph 15.4.b.bis****: The decisions rendered by the Committee shall be binding and shall be followed by action by transnational corporations* ***and*** *other business enterprises* ***of transnational character****, States Parties and related organizations (such as a special fund for victims, administrative sanctions for the companies concerned by the decisions, etc.).*

In addition, the Committee should guide States in their strategies for regulating TNC activities on preventing human rights violations.

***Proposed new paragraph 15.4.c.bis****: The Committee may also make recommendations to States parties to guide them in their strategies to regulate transnational corporations’ activities in order to prevent human rights violations. For this purpose, the latter may be assisted by independent experts and professionals in the fields in question.*

It is also necessary to create a fund that would be financed by a tax imposed on TNCs.

***Proposed new paragraph 15.7****: States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument),* ***funded by transnational corporations through an international tax, to******provide for*** *legal and financial aid to victims. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument). Before the tax is implemented, only state parties will be in charge of financing the funding of these institutions, through the general UN budget. The Conference of Parties shall define and establish the relevant provisions for the functioning of the Fund.*

The Global Campaign believes that without the establishment of an independent international treaty implementation mechanism, whose decisions must be followed, it will not be possible to end TNC impunity and to ensure access to justice for affected communities and individuals. This mechanism may be set up in parallel and be complementary to the Committee proposed in this article. We propose a new chapter within article 15:

**International monitoring and enforcement mechanisms**

*1. The UN Treaty Bodies on Human Rights and other UN related complaint mechanisms shall be competent to directly receive complaints against TNCs and International Economic and Financial Institutions. They shall forward these to the International Court on TNCs, as instituted below.*

*2. Conflicts between TNCs and States involving human rights issues shall not be appealed to international arbitration tribunals on trade and investment. The instances that have jurisdiction to solve these conflicts are: international, national and regional jurisdictions, and mechanisms for monitoring and enforcement acting in a complementary manner.*

*3. To guarantee the implementation of the obligations set out by this Treaty, an International Court on Transnational Corporations and human rights is established. The Court has the competence to receive, investigate and judge complaints against TNCs for violations of the rights concerned and the obligations established in this Treaty.*

*4. The Court protects the interests of the individuals and communities who are affected by the operations of TNCs, which includes ensuring full reparation for them and imposing sanctions on TNCs and their managers.*

*5. The Court’s rulings and sanctions are enforceable and legally binding.*

*6. The International Court shall function in accordance with the annexed Statute of the present Treaty.*

*7. An International Monitoring Centre on Transnational Corporations and human rights is created. It will be responsible for evaluating, investigating and inspecting TNCs’ activities and practices. The Centre shall issue recommendations based on its findings.*

*8. The Centre is managed collectively by States, social movements, affected communities and other civil society organizations.*