

Statement delivered during the 6th session of negotiations for a UN Legally Binding Instrument on Transnational Corporations and Human Rights, thursday October 29th 2020

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.*

Finally, Mr. Chair, I need to express how we stand here today filled with pain and anger at the tragic murder of mama Mafikile Ntshangase, a community activist who was fighting and denouncing Human Rights violations and impunity in the mining sector in Somkhele, South Africa. We have the opportunity, with this instrument, to adequately address corporate impunity, which has been prevailing until now.

However, 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.