

7th session OEIGWG

Article 11

Statement of Friends of the Earth International

Thank you Mr. Chair,

My name is Bertrand Sansonnens and I speak on behalf of Friends of the Earth International and as a member of the Global Campaign. The pandemic has shown that human rights mechanisms to accomplishment cannot be dependent on business and especially on transnational corporations' interests. So we have to control their activities and reorient it (them?) towards the Human Rights principles.

Generally speaking, the Third Revised Draft still lacks strong mechanisms to guarantee the enforcement and effectiveness of the Treaty. In the current draft, all the responsibilities are based on the States, or based on national provisions, which we know is insufficient. Indeed, through their complex legal and administrative structures and outsized economic and political power, TNCs find ways to bypass accountability in national jurisdictions. This is why the objective of this process should be to establish an international framework for TNCs and other businesses with transnational character, beyond States' obligations.

It is also important to consider that through their undue influence, private sector lobbies do everything in their power to prevent or delay the adoption and/or weaken the content of any new national/regional/international laws that seek to regulate the activities of TNCs and that could hinder the profits of these entities. Furthermore, today TNCs are able to sue States before international arbitration courts through ISDS controversial mechanisms included in more than 3400 investment treaties. This is why we need an international binding instrument in the first place.

Article 11 does not allow for a clear resolution of conflicts between different national legislations or between international human rights law and trade and investment law for example. It should be explicitly stated that the choice of applicable law should be the choice of affected communities and persons and/or the law most protective of them. The article 11.2 allows the affected peoples' choice but it limits their options.

To strengthen the provision of this article, we propose the following amendment:

***Amendment 11.2:** All matters of substance which are not specifically regulated under this [international legally binding instrument] ~~may~~**shall**, upon the request of the victim **and/or if another law better protects the victims' rights**, be governed by the law of another State where:*

- a) the acts or omissions have occurred or produced effects ; or*
- b) the natural or legal person **conducting business activities of transnational character** alleged to have committed the acts or omissions is domiciled, **including through its business relationships and global production chain.***