



## Open letter to the Member States of the Organization of the United Nations

23 July, 2019

Re: Publication of the [“Revised Draft” for the negotiation of the “Legally Binding Instrument to Regulate, within the framework of International Human Rights, the activities of Transnational Corporations \(TNCs\) and other Business Enterprises”](#).

The member organisations of the **Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity** (Global Campaign), welcome the “Revised Draft”, published on July 16, 2019 for the negotiation of a legally binding instrument on TNCs and with respect to human rights in the framework of the process initiated with the [Resolution 26/9](#) by the United Nations Human Rights Council (UNHRC) in June 2014.

This draft, which was committed to by the Rapporteur at the end of the fourth negotiation session celebrated in October 2018, constitutes an important indication of continuity in the process. As we have pointed out in previous years, the publication of successive drafts implies a willingness to continue promoting the construction of the Instrument and this is undeniably positive. In this sense, we also welcome the fact this Draft has been published three months prior to the fifth session, permitting various actors in the process enough time to analyse and prepare concrete proposals. However, following a first reading of the text, we have concerns regarding some elements of the content of the “Revised Draft”.

First of all, we are concerned that the new text has included one of the fundamental proposals made by the European Union, private sector associations and other States, specifically the broadening of the scope of application to all enterprises, without differentiation, which is in direct contradiction to the mandate established in the Resolution 26/9, which clearly refers to companies with “transnational activity”; furthermore, it does not plainly recognise the central concern of filling in this gap in international human rights law. By making this choice, contrary to the spirit of the Resolution in working in favour of Peoples and States that are participating with the expectation that the instrument would create mechanisms to control violations and abuses resulting specifically from TNCs’ activities, which they cannot control. At the same time, it has not included the numerous proposals made by a wide range of organisations, social movements, representatives of affected communities and States during the fourth session, such as, the recognition of direct obligations of transnational corporations, among others.

Moreover, we have observed that some important elements have been eliminated which had constituted important advances, such as, for example, the primacy of human rights with

respect to trade and investment agreements, that had been clearly defined in the “[Zero Draft](#)”.

We regret that the “Revised Draft”, to a large extent, has been limited to reordering the proposals from the “Zero Draft”, failing to introduce improvements so essential to those affected, such as the Instrument’s control and supervision mechanisms.

Therefore, the Global Campaign regrets that the expectations generated in the fourth session in respect to the possibility of reintroducing fundamental content has not been fulfilled. Notwithstanding, we affirm our willingness to reintroduce debate regarding these issues in the fifth session, while also reserving the possibility of emitting additional opinions following a more thorough and in-depth analysis of the text as presented by the Rapporteur.

In spite of what has been observed, the Global Campaign considers that the historic opportunity offered with these open negotiations through the Resolution 26/9 still has the potential to include binding norms and effective globally enforced mechanisms that duly respond to the expectations of justice for our Peoples affected by TNCs’ activities. Because of this, we reaffirm our commitment to globally mobilise and specifically to be present once again in Geneva during the OEIGWG’s fifth session from October 14 to 18, 2019, where both inside and outside of the UN Palais de Nations we will demand the Peoples’ rights above those of the investors, and the profit and the impunity of the TNCs.

We urge the UN member states to participate in the negotiations of the Instrument text, by constructively contributing through opinions, proposals and concrete formulations towards its successful conclusion, within the framework of the Resolution 26/9.