

6th Session Negotiation WG Binding treaty 26th of october 2020

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Thank you Mr. Chair,

My name is Manoela Roland from the Human Rights Institute HOMA at the Juiz de Fora University in Brazil. I speak on behalf of Friends of the Earth International. We are member of the Global Campaign and the Treaty Alliance. The pandemia has shown that human rights mechanisms to make them effective cannot be dependent on the profit interests of business and especially transnational corporations’.

The primacy of international human rights law over any other international legal instruments, and in particular over trade and investment agreements, is the established principle which has been an integral part of the goal of the Working Group. However, this core principle is not clearly mentioned in the Second Revised Draft. This principle must be explicitly reaffirmed in a separate article, in the Preamble and in article 14 (Consistency with international law and)

In this new version of the Draft, it was added that trade and investment agreements have to be **compatible** with the obligations of this Treaty. This is an improvement that we welcome. But, in order to further strengthen the provisions of the future Treaty, we propose the following amendments:

Article 14. Consistency with international law and principles

Amendment 14.5: States Parties shall ensure that:

*a: any existing bilateral or multilateral agreements, private-public partnerships **and contracts**, [...] shall be interpreted and implemented in a manner that will not undermine or limit their capacity to fulfil their obligations under this LBI and its protocols, as well as other relevant human rights conventions and instruments.*

*b. Any new bilateral or multilateral trade and investment agreements shall be compatible with the **human rights obligations of States’ parties and of transnational corporations and other business enterprises of transnational character** under this (Legally Binding Instrument) and its protocols, as well as other relevant human rights conventions and instruments. “In the event of a conflict between the obligations of the Members of the United Nations under the UN Charter and present LBI, and their obligations under any other international agreement, their obligations under the UN Charter and the present LBI shall prevail.” (as pursuant to Art.103, UN Charter).*

Indeed, in the current framework of neoliberal policies, human rights law is treated as subordinate to commercial and investment law. It is therefore essential to reaffirm the primacy of international human rights law over trade and investment agreements and legislation, and ensure that primacy is effectively implemented

It is also important to consider that through the undue influence of TNCs, private sectors 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 their activities in order to protect human rights and that could also hinder the profits of these entities. What's more, today TNCs are able to sue States before international arbitration courts through controversial ISDS mechanisms included in more than 3400 investment treaties. This is why we need an international binding instrument in the first place.

Thank you very much!