

Submission to the UN Working Group on Business & Human Rights Pax Christi International, 28 February 2019

Pax Christi International welcomes last year's published Zero Draft "Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises" and the Zero Draft Optional Protocol on national implementation mechanisms. Although these instruments should be further strengthened, they are truly historic instruments giving important recognition to the pledges of victims of human rights violations linked to business activities and those supporting them.

Our peace movement appreciates the work undertaken by the Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises. We are thankful for the offered opportunity to give our views through this call for submissions as part of a broader inclusive and participatory process of consultations in which several of our members and partners have participated. Hopefully such input can contribute to a strong treaty that can bring justice for victims and can reinforce attention and action for business-affected communities by civil society, governments, international organizations, the Church and companies.

Globally, many of our members and partner are striving for the promotion and protection of the human rights of those victimized by business activities. Through our Latin American project, Pax Christi International has been witnessing growing human rights violations by extractives companies in Mexico, Guatemala, Colombia, Peru, Chile and Paraguay. Through capacity building and advocacy work we support our members and partners who are accompanying communities in their nonviolence resistance activities.¹

Considering the devastating impact of extractive activities on communities in Latin America, in other regions in the world and also by other business sectors, we call upon all UN member states to actively and constructively participate in the next round of negotiations² and to contribute to robust legally binding treaty that promotes and protects human rights and the environment. This is in line with the Sustainable Development Goals (SDGs), which UN member states have committed themselves too, and would give a strong signal to businesses and governments who have changed or might consider changing their business and sustainable development policies.³

¹ See our position paper on extractives and Latin America of October 2017: <https://www.paxchristi.net/news/pax-christi-international-releases-position-paper-extractives-latin-america/6808>.

² We recall the June 2018 Open Letter to UN member states by the Treaty Alliance, a civil society campaign joined by 1500 individuals and 1100 organizations, online available at: <https://www.treatymovement.com/statement>

³ In particular we would like to highlight the decision of the Canadian government of January 2018 to set up an ombudsperson, the first country in the world to do so. We hope that the ombudsperson can start taking up offices soon with sufficient mandate and resources. Also, that other countries will follow this landmark decision.

Recommendations regarding the draft text for a legally binding instrument on business and human rights.

In response to the working group's invitation for submissions, Pax Christi International would like to identify several areas where we hope the treaty draft text can be strengthened through subsequent draft texts and the next rounds of negotiations. Please note that we support several asks of other civil society members and UN member states which were expressed during the Fourth Open-Ended Intergovernmental Working Group meeting of last year October. These are our recommendations:

Scope of the treaty

- To not only to limit the scope of this treaty to “business activities of a transnational character” but also include national business activities. This is crucial for our Latin American members and partners helping communities resisting extractive activities and holding foreign businesses accountable, as many transnational extractive companies function through nationally set up companies.
- To make clear which international human rights law instruments are covered by this treaty by mentioning the nine-core international human rights conventions⁴, the Universal Declaration on Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples and the eight core ILO conventions.⁵
- To refer to human rights instruments that give protection to the most vulnerable groups, for example women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons, as they have specific needs and rights. It is our experience by working with Latin American indigenous communities that they are often not aware of these rights, so they should be informed and supported in standing up for them.

Content of the treaty

- To explicitly impose in the treaty text an obligation for businesses to respect human rights that would set out a clear and universal framework for all corporations and support businesses who respect them. There is a huge lack in the text on the issue of tackling impunity of businesses that violate communities their human rights.
- To reaffirm the primacy of human rights, especially in the context of state obligations to abide by trade and investment legal regimes and investor state dispute settlement structures in which there should be spaces for the voices of communities to be heard and to be given the necessary weight in decision-making.
- To make specific references to human rights and environmental defenders and assistance to them. The draft text mentions “victims”, “representatives”, “families”, or “witnesses” but leaves out human rights and environmental defenders that don't necessarily fall under one

4 OHCHR, 'The Core International Human Rights Instruments and their Monitoring Bodies', online available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

5 International Labour Organization ('ILO'), 'Conventions and Recommendations', online available at: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

of these groups, while they defend these groups and are in many contexts in the world increasingly under threat and criminalized.

- With regarding to the groups most affected by human rights violations by business activities, there should be more attention to "gender issues" from a differentiate approach. Also, for not only indigenous groups, but also to urban and rural mestizo and Afro descendent communities whose human rights are affected by businesses activities.
- Although consultations are mentioned, the scope of the right recognized by the 169 ILO Convention is not clear. Governments and businesses have the obligation to seek free, prior and informed consent before business activities start and to fully respect outcomes. Governments should make resources available for the organization of consultations, including through international cooperation.
- To include in the provisions on the right to information that indigenous communities should have access to information in their own languages prior, during corporative activity as well as after if human rights abuses occur. Our members and partners on the ground see a great need for such information and with 2019 being the UN International Year for Indigenous Languages this can offer a momentum.
- To make specific reference under research for international cooperation to objective and independent research with truthful information on the environmental impacts of business activities, as such information very little available and our Latin American members and partners report that some businesses make their own biased reports.

Means of implementation of the treaty

- To include in the treaty text how often the Conference of States Parties would exactly be held, which should be as a minimum yearly. Currently, the draft treaty text only mentions that the "States Parties shall meet regularly in a Conference of States Parties". These conferences are important meetings for members of civil society to give important information with regard to the progress of the treaty.
- To strengthen the possibilities that civil society have to interact with the Committee of Experts that will be composed, such as through sending alternative reports next to states parties reports and the possibilities to send in specific complains on emblematic cases. The Committee it's observations and recommendations could offer important support for the work of civil society at national level.
- To include in the provisions on the Committee of Experts that they will be in charge of investigating human rights abuses caused by business activities. Also, that they can visit the countries where victims have denounced that such abuses have taken place to verify what has happened on the ground and meet with them as well as others parties.

[Pax Christi International](#) is a Catholic and faith-based peace movement with 100 member organizations worldwide promoting peace, respect for human right, justice and reconciliation. Many of the communities that our member and partner organisations in Africa, Asia and Latin America support have direct experience of the harm that can occur if companies ignore their impact on human rights. In Latin American we carry out a specific capacity building and advocacy project related to communities who are non-violently resisting extractives industries.