



Human Rights Roundtable to address corporate power

Towards a Binding Treaty on Human Rights for Transnational Corporations that strengthens Colombia as a global power of life

The [CSOs Human Rights Roundtable to address corporate power](#) is an autonomous space, made up of more than 60 environmental, social and human rights organizations of civil society in Colombia, whose purpose is dialogue, dissertation, mutual learning and the search for common proposals around the critical analysis of business conduct in the country. Since its creation in 2016, the Roundtable has advocated the importance of creating national and international regulatory frameworks that oblige companies to respect human rights. Thus, the Roundtable has promoted the approval of a Binding Treaty on Business and Human Rights that regulates the activities of transnational corporations and other companies in International Human Rights Law (IHRL).

Discussing a binding treaty is a priority in Colombia. The multiple cases of human rights violations involving transnational companies that have affected individuals, ethnic and peasant communities, nature and territories are well known. After nine years of negotiations for a legally binding international instrument at the United Nations, companies in the country continue to cause serious violations of human, environmental and territorial rights, without legally answering for the damages caused. This is so given that the country lacks legal mechanisms that allow companies to be brought to justice, as well as that affected people and communities are fully compensated.

The Roundtable shares the concern that President Gustavo Petro expressed during the World Economic Forum in Davos in 2023¹ about the absence of binding instruments as an obstacle to finding solutions to the climate crisis. Therefore, in the discussions on corporate legal responsibility for human rights violations, we believe that the government should be coherent and promote a paradigm shift that desists from voluntary frameworks and prioritizes the adoption of national and international regulations that oblige companies to respect human rights and to respond to justice in case of violating them.

Likewise, on the government's intention to promote an agenda towards the construction of "total peace" and consolidate itself as a relevant actor in different international forums that address solutions to the climate crisis -even proposing strategies such as the renegotiation of trade agreements-, the Roundtable agrees on these aspirations and, consequently, considers it necessary for the national government to prioritize the promotion of a legally binding instrument to regulate the transnational corporations from the point of view of IHRL, because it is not possible to think about moving towards total peace, proposing solutions to the climate crisis, or renegotiating trade agreements, without stopping corporate impunity.

We reiterate to the Colombian State the importance of assuming leadership in the upcoming negotiations of the legally binding instrument in the round of negotiations that will take place from October 23rd to 27th, 2023, since the support of the countries of the global south to this process is fundamental, since it is the region that has the least tools to confront the power of transnational corporations. In addition, it is necessary for Colombia to contribute, based on the proposals of civil society, to the discussions on the content proposed by the

¹ See: Remarks by President Gustavo Petro at the session, 'Leading the charge through the new normal of the earth', on the sidelines of the World Economic Forum. Available in: <https://petro.presidencia.gov.co/prensa/Paginas/Palabras-del-Presidente-Gustavo-Petro-en-la-sesion-Liderando-la-carga-a-tra-230118.aspx>



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Treaty, and also to urge the President-Rapporteur, currently headed by Ecuador, to comply with the mandate of Resolution 26/9 of the UN Human Rights Council².

We alert the Colombian State that its support for the Binding Treaty is particularly relevant this year, given the critical moment facing the instrument in the negotiation process. The [updated draft of the Treaty](#) that will be submitted for discussion in the ninth session, represents a serious setback with respect to the [first document](#) discussed in 2017. In the document referred to, the essential thing was the protection of victims and communities affected by business-related human rights violations, the fight against impunity and access to justice³. These elements have been losing strength in the course of the negotiations, so that, currently, the document the concepts used in the Guiding Principles of the United Nations (objective sought by some countries of the global north and by business organizations), leaving aside the possibility of establishing a human rights treaty with another more ambitious orientation, to impose obligations on transnational corporations.

Therefore, *the CSOs Human Rights Roundtable to address corporate power* presents three issues where it considers there are significant setbacks, and on which it expects the Colombian State to pronounce itself in the next negotiations:

1. Human rights must take precedence over trade and investment rules

The primacy of human rights over trade and investment agreements was removed from the preamble of the updated draft Treaty. This gives room for justice operators to privilege regulatory frameworks that protect investments to the detriment of human rights, in the event of a collision between investment protection standards and human rights standards, making regressive decisions for people and communities affected by corporate action.

This elimination legitimizes the existence of investor-State dispute settlement mechanisms, which represents an affront to the sovereignty of the latter. In fact, the Colombian State currently faces 21 lawsuits with claims for compensation totaling 12.8 billion pesos.⁴ In addition, it evidences the active defense that business organizations have made in the course of the negotiations, alleging the absence of negative impacts on human rights associated with trade agreements and⁵ questioning the legal basis of the primacy of human rights over trade and investment agreements, considering it a hierarchy contrary to international law⁶.

² In 2014, at the 26th session of the Human Rights Council, Resolution 26/9 was adopted in which it decided "to establish an open-ended intergovernmental working group to elaborate, inter alia, a legally binding instrument to regulate the activities of transnational corporations and other business enterprises in international human rights law". See: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf>

³ See: Report of the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (2018). Available in: <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>

⁴ See: National and international declaration "Let's recover the sovereignty of Colombia in defense of water, life and territories. Available in: <https://www.colectivodeabogados.org/mision-internacional-a-colombia-busca-aporar-rutas-para-frenar-millonarias-demandas-de-transnacionales/>.

⁵ See: Report of the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (2017). Available in: <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>

⁶ See: Report of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights on its fourth session (2019). Available in: <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>



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The Roundtable considers that human rights take precedence over trade and investment regulatory frameworks. Human rights should in no way be seen as an obstacle to investment, but as a requirement without which it is impossible to invest. Therefore, re-including the primacy of human rights over trade and investment agreements in the preamble is central, as such inclusion would result in greater judicial protection for individuals and communities affected by business operations and in the strengthening of the sovereignty of States and peoples⁷. In addition, the inclusion of this principle could support the renegotiation of trade agreements.

2. The Binding Treaty cannot focus on due diligence as a preventive obligation.

In the updated draft of the Treaty, prevention obligations are excessively focused on corporate human rights due diligence. In previous drafts, due diligence was one of the forms of prevention, along with provisions on greater access to information or protection of human rights defenders, among other obligations. However, echoing the positions of European countries that are focusing their efforts on adopting corporate due diligence laws on human rights, the updated draft has a strong commitment to a focus on this figure which cannot be the only obligation for companies to develop the Binding Treaty.

Even in the updated draft, the provisions on due diligence have shifted to focus on the conduct of companies rather than examining the results of their implementation. That is one of the riskiest aspects of this figure, because when proving the responsibility of the companies, they will be able to evade their responsibility arguing that they have followed all the steps that were required within the framework of due diligence, leaving the victims and affected people without being able to access justice.

The Roundtable advocates that the Binding Treaty develop a broad framework of direct obligations for companies and that, within the obligations of prevention, it goes beyond due diligence and the⁸ application of internal business procedures⁹. Due diligence is also an insufficient approach to address human rights violations arising from business operations in contexts of armed conflict, as is the case in Colombia. In these cases, it is essential to investigate the legal responsibility of companies in the very generation of the armed conflict, as well as in the profit they were able to obtain thanks to the context of violence.

3. The Binding Treaty must guarantee mechanisms for access to justice.

The lack of access to justice is one of the main challenges faced by organizations and communities in human rights defense processes. The Binding Treaty therefore presents itself as an opportunity to correct the asymmetry in international law. This asymmetry means that, while transnational corporations have solid mechanisms such as the investor-State

⁷ See: Frontiers of an Effective Binding Treaty on Transnational Corporations and Human Rights. Available in: <https://www.stopcorporateimpunity.org/las-fronteras-de-un-tratado-vinculante-eficaz/?lang=es>

⁸ See: Contribution of Colombian environmental, social, development and human rights non-governmental organizations to the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights. Available in: https://www.ciedhcolombia.org/files/ugd/739426_a3c5c397eb1a4b5582ce72a05a986b8d.pdf

⁹ See 'Justicia LTDA. Current debates in business and human rights to confront the deregulation of corporate power' by the Socio-Legal Center for Territorial Defense SIEMBRA (2022). Available in: <https://www.centrosiembra.org/2023/03/24/conoce-la-nueva-publicacion-de-siembra-justicia-ltda-debates-actuales-en-empresas-y-derechos-humanos-para-enfrentar-la-desregulacion-del-poder-corporativo/>.



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dispute settlement system, there is no international mechanism that guarantees access to justice for victims and communities affected by the operation of transnational corporations.

Access to justice for victims and affected communities – access to remedy, as it is called in the updated draft – has been one of the weakest items in recent negotiations. While previous drafts recognized the importance of local non-judicial bodies, such as corporate grievance mechanisms, it was stated that these bodies could not take the place of judicial mechanisms, as their role was strictly complementary. The updated draft eliminates the State's obligation for the judiciary to have the competence to deal with human rights violations by encouraging States to opt only for non-judicial mechanisms.

The Roundtable considers it essential that this article be strengthened, so that the concept of comprehensive and transformative reparation for victims and affected communities is integrated, since the concept of remedy is insufficient when we talk about irreversible damage to communities and territories. In addition, we support the integration of the proposal of some civil society organizations on the creation of an international tribunal that can settle claims, judge and enforce sentences¹⁰. This would ensure the implementation of the Binding Treaty, as well as compliance with the obligations established by the instrument.

¹⁰ The International Tribunal has been proposed by the Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and End Impunity. See: <https://www.stopcorporateimpunity.org/las-fronteras-de-un-tratado-vinculante-eficaz/?lang=es>



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Requests to the Colombian State for the ninth session of the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights

Based on the foregoing considerations, the Roundtable requests the Colombian State, and in particular the Ministry of Foreign Affairs and the Permanent Mission of Colombia to the United Nations and other International Organizations based in Geneva:

- Support the process of the legally binding instrument that is being carried out in the United Nations and actively participate in the negotiations with a coordinated position among all State institutions that have competences related to economic actors and transnational corporations.
- Participate actively in the negotiations to avoid that the content of the Binding Treaty is limited to regulating the Guiding Principles of the United Nations, reducing its strength, and instead advocate for the adoption and negotiation of a strong and effective instrument for the fight against the power held by transnational corporations and the impunity in which human rights violations derived from corporate actions are found.
- Request, in the course of the negotiations, the re-inclusion of the principle of the primacy of human rights over trade and investment agreements.
- Promote a legally binding instrument that imposes direct obligations on transnational corporations, which must go beyond prevention obligations, and certainly beyond corporate human rights due diligence.
- Contribute to the contents of the Treaty on the scheme of legal responsibility for companies, as well as to the guarantees that we must have to access justice in the face of the complexities involved in the violations of rights committed by transnational actors.
- Build, from now on, the government's position on the Binding Treaty together with civil society organizations and communities affected by companies that for years have denounced corporate actions that violate fundamental rights. In that sense, we request that a methodology be established so that the organizations of the Table for Human Rights against Corporate Power can have an effective participation in the negotiations of the Binding Treaty.
- Promote coherent action on human rights and business at the international and national levels. That is, to promote mandatory regulatory frameworks for companies – not only in the United Nations – but also in the Congress of the Republic, with a Law on Human Rights and Business for Colombia, given the urgency of building solid and effective legal mechanisms at the national level.

The Roundtable reiterates its willingness to dialogue with the national government on the regulatory frameworks related to human rights and business, and urges the Colombian government to move forward in the ninth round of negotiations that is approaching, promoting progress towards a Binding Treaty that strengthens Colombia as a World Power of Life.

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