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| Rue Amat 6CH-1202 GenèveTel. +41 (0)22 731 59 63Fax +41 (0)22 731 91 52E-mail: contact@cetim.chSite Web: [www.cetim.ch](http://www.cetim.ch/) | **ASSEMBLÉE GÉNÉRALE****CONSEIL DES DROITS DE L'HOMME***5ème session du Groupe de travail intergouvernemental chargé d'élaborer un instrument international juridiquement contraignant sur les sociétés transnationales et autres entreprises (14-18 octobre 2019)****Débat sur le préambule et articles 1 et 2*** |

***Déclaration orale***

*Vérifier à l'audition*

Mister president,

(1) As elaborated by delegate of France previously,

It is important to include provisions from French law on the (duty and vigilance) which goes beyond due diligence, as the this would cover a legal obligation to effectively implement this duty and a mechanism for liability and sanctions. On matter of non-compliance (preventive measures, as enumerated), the necessity of sanction should be considered, along this line. .. In this sense, it is necessary to restore the clause contained in the previous draft text, and I quote “*Failure to comply with due diligence duties under this article shall result in commensurate liability and compensation in accordance with the articles of this convention”.*

(2) / art.5.3. The reference on consultation, not consent, is not sufficient to guarantee respect for the right to participate in the decision-making of the populations concerned //

* With regard to para 3.b of article 5 on consultations of concerned groups, we propose the following amendment: “*Consultations with indigenous peoples,* ***peasants, rural communities, and other concerned populations****, will be undertaken in accordance with the internationally agreed standards of free, prior and informed* ***consent****, as applicable”*. This should relate with the context of vulnerability in the context of land, natural resources, and biodiversity. The respect of the consultations means the right of the populations concerned to oppose projects carried out by TNCs on their territory.

(3) / Article 5.5 also refers to the mechanisms of undue influence of TNCs on public policies. Although this paragraph is welcome, its scope is limited by the reference to national legislation. In order to ensure a firm and effective clause on this issue, the Global Campaign proposes changes to the last sentence of para 5, of article 5: “*In setting, developing, and implementing their public policies with respect to the implementation of this binding treaty on transnational corporations and other business enterprises, as well as in their bilateral, regional, multilateral or other types of trade and investment agreements, State Parties shall act to protect these policies from commercial and other vested interests of transnational charácter… corporations and other business enterprises, and to uphold the primacy of human rights.”*

Into, as follows:

*In setting, developing, and implementing their public policies with respect to the implementation of this binding treaty on transnational corporations and other business enterprises, as well as in their bilateral, regional, multilateral or other types of trade and investment agreements, State Parties shall act to protect these policies, laws, policymaking processes and government bodies from commercial and other vested interests of transnational carácter*.

In addition, this subject should also be included in article 14 “Implementation”, which covers the whole treaty.

 (5) there is not as yet the wording, as provision, on preventive standards in regard of public contracts, public-private partnerships, and provision of services or activities where TNC and transnational may link to.

We should add also following changes:

* Replace “constructive consultations” with “mandatory consultations”.
* Delete the references to national legislation in paragraphs 4 and 5 which limit the scope of article 5.
* Provide preventive standards for state as a standard setting as we know, perhaps with reference to the framework like treaty mechanism in general comment
* Include in this article precautionary measures to prevent irreparable damage.