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Binding Treaty to Regulate Corporate Power is Essential for a Better Tomorrow: Statement of member organizations of the Treaty Alliance in response to the COVID-19 crisis

June 2020

We, the undersigning organizations, all members of the Treaty Alliance are concerned by the challenging situation generated by the COVID-19 pandemic and the economic and social impact of the measures adopted to contain the contagion, including its differential impact on women. We wish to express our solidarity to those particularly affected by the disease and the lockdown measures, the millions of marginalised people who are at the intersection of multiple situations of vulnerability and for whom physical distancing mitigation is not an option.

COVID-19 patently confirms the analysis that we have collectively produced over the years. The extreme risks and threats that our societies are confronted with in facing the pandemic today are closely connected to the failures of our economic, political and social systems to realize human rights and environmental protection. For several years now, we have been disclosing the structural pathogenesis of a financialised globalization that has aggravated inequalities within and between countries, in the context of the intergovernmental negotiations for the Binding Instrument on Transnational Corporations and Other Business Enterprises, currently undergoing under the auspices of the Human Rights Council in Geneva.

Our societies are for example ill equipped to respond to the pandemic, due to a range of significant failures that deregulated globalization adjustment plans and concentration of power of corporations have determined in the last decades.

Limitless resource grabbing has broken the borders between ecosystems, leading to viruses naturally hosted in animals to transit into human beings.

Market-solutions and the processes of privatization imposed on the public health, care and social protection sectors have significantly contributed to the weakening of public health, care and social protection even in countries equipped with national health systems, which has dramatically caused the lack of preparedness and insufficient capacity of most national responses to the dire health needs triggered by the pandemic.

The industrialization and globalization of food systems has reduced local food producers' capacity to make healthy food available to nourish people locally, while ultra-processed food increases people's vulnerability to COVID-19, both from the health and financial perspective. It's a cruel reality that in the midst of a looming food crisis, agricultural production by local farmers - those who provide between the

70 and 80% of healthy food worldwide- has been sacrificed due to lockdown measures. On the other hand, contagion mitigation measures in most countries have worked in the interest of the big agri-food chains, which offered no comparative advantage from a risk management point of view.

Global labour flexibilization has increased the amount of informal workers whose precariousness is today the collateral pandemic of COVID-19. This is especially affecting women, who are majoritarily in the most precarious, “flexible” and terciarised jobs. Domestic workers as well as jobs in the trade and services sectors are highly feminised, which adds up to the current gender pay gap. Millions of them have lost their incomes since the beginning of the outbreak, which is dramatically worsening their personal, family and community life conditions. Where no social welfare is in place, millions of formal and informal workers are sliding into poverty or extreme poverty.

The digitalization of education in the lockdown, with only private facilities available and only for those who can pay for the technologies drastically excludes the many children from families unable to cover immatriculation costs and the costs of the tools used for teaching activities in this emergency. Simultaneously, it puts a heavier care burden on women. Even in those countries where there is public access, the general assumption is that women will be at home taking care of the children and providing the support of families during lockdown. Data available at national level provide increasing evidence that the technological option to replace teaching in presence is an additional driver of exclusion in view of the unaddressed digital divide and crisis of care.

The priority given by certain governments to war preparedness and military expenditures in their national budgets, including through support to a “never in crisis” weapons industry, has distracted immense resources to the defence sector, thereby structuring national budgets and industrial sectors according to needless priorities. Due to capture of the States corporations, the weapons industry, the extractive industry and other major industries, existing policies are harming us and are infringing upon our human rights.

Through exploitation, dispossession and direct abuses of human and environmental rights, and corporate capture of public policy making, corporate power is now working to maintain a dominant economic system that prioritizes company profits over the realization of human rights. This strategy has not only exposed States’ weakened or non existing production capacity for the range of health tools needed to contain the spread of the disease at home, but it has also tragically endangered States’ capacity and financial availability to adequately respond to the needed social expenditures and transferences on a massive scale.

Governments have difficult choices to make in these unprecedented times, largely as a legacy of much abusive corporate behavior that States have not been able nor

willing to govern, notwithstanding its adverse impact on human and environmental rights. The scale of corporate control over government is an endemic source of pathogenesis, whose inefficiency has finally been brought to the fore as a point of non-return by the COVID-19 global outbreak, in favour of a societal quest for reclaiming the responsibility of public services. But we are not there, yet.

Some witnesses from different communities in our movement have reported that companies engaged in extractive projects abuse lockdowns to skip informed consent provisions. Others have explained how middle men are taking advantage of the health crisis to pay small food producers less while increasing prices in the cities, with the excuse of the lockdown. Other groups have disclosed the bias of national pandemic measures largely favoring the agro-industry and its distribution channels, while the support offered to peasants is mostly through private insurance schemes. Abuses of the rights of agricultural workers include shift extensions, combined with total negligence regarding poor housing, inadequate food and sanitary conditions, in violation of physical distancing measures imposed by governments. Mass dismissals of workers have also been reported by our members in several countries.

While information is an essential precondition for the exercise of any right, in the wake of Covid-19 a number of tech companies have seen a surge in their business during this crisis. Some have already obtained enormous users' personal data that can track people and infringe on their right to privacy. In contrast, due to policies largely influenced by corporations, the right to access information is being restricted or suspended. This creates a major obstacle in access to remedy for people whose rights are being infringed.

The ground for testing the will and the power of governments vis a vis the corporate sector in the context of COVID19 is coming soon with regard to access to the essential health goods and equipment - vaccines, medicines and all other medical devices - that will be developed and produced to control and fight the new coronavirus. Pharmaceutical companies have arguably taken steps in countries to benefit from the current race to the cure against COVID19 already (cfr. Gilead orphan drug request to FDA), and they are using their massive corporate power to oppose governments' measures to smoothen patent exception procedures in countries, as well as any other collective intergovernmental initiative to develop and produce vaccines and medicines as global public goods, under the auspices of the World Health Organization (WHO).

The dominant economic system allows big corporations to allocate a significant amount of funding to mitigate the impacts of lockdown measures and the looming economic crisis on their profit-making. In this setting, corporations are influencing international and national legislative and policy decisions to benefit their profit margins.

The many irrefutable lessons from COVID-19 lead us all to one converging direction, namely **the importance of introducing and advancing legal frameworks, at national, regional and international level, to ensure corporate accountability with respect to human and environmental rights.** In this much needed global effort to overcome a system of deregulation and advance governments' standard-setting capacity, the negotiation process around the Binding Instrument on Transnational Corporations (TNCs) and Other Business Enterprises (OBEs) with respect to human rights must continue. **Ultimately, with the new normal, we need new norms.** We need legally binding arrangements through which the right to social protection and healthcare, the right to food and water, the right to education and employment, the right to a healthy environment, right to information, right to privacy, the right to freedom of assembly are properly addressed, promoted, and protected by the State, as key elements for the transformative change we want to see towards substantive democracy and sustainable development. If we are serious about the Agenda 2030, a legally binding instrument to regulate corporate power is the concrete step we need in order to move in the direction of justice, rule of law and true sustainability for all; the best vaccine to prevent pandemics like the current one.

Nothing will be the same, it is often said. But change will not happen by itself. This means that COVID-19 offers an extraordinary opportunity for embracing communities' expertise and social movements' knowledge into shaping the new societies where planet's rights and human dignity prevail over corporate profit. After the COVID19, the active participation of grassroots communities, social movements and civil society organizations in the Binding Treaty process and in any similar normative route at national or regional level is of even greater relevance. These are the people who at the end will have suffered the highest price of the pandemic, not just in terms of their health. These are the people who will have accompanied and supported those in greater needs during the pandemic. These are the people who will know best the impact of removing the ground rules of a disciplined society in a scenario of mounting inequalities, sadly fuelled by the impact of the pandemic.

The COVID-19 crisis tells us that we need societies in which effective accountability mechanisms are in place. **Therefore, we urge all national authorities, and particularly the member states' delegations of the Human Rights Council, to make all efforts possible to continue advancing towards the adoption of a Binding Instrument on Transnational Companies and OBEs, strengthening the diplomatic route and ensuring effective participation of those actors that truly pursue democracy, accountability and the public interest.**

These processes should pave the way to building the new normality in which present and future generations can enjoy the results of states commitments enshrined in the bill of rights and in our national constitutions.

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